

PRO-X: A HISTORICAL APPROACH TO THE PHILOSOPHICAL PROBLEMS OF
THE LIFE/CHOICE BINARY IN AMERICAN ABORTION DISCOURSE

by

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DISSERTATION ABSTRACT

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I employ history to ground, to reveal, and to understand the logical, metaethical, and otherwise explicitly philosophical problems of the pro-life/pro-choice binary system in American abortion discourse, a binary I refer to as “pro-x.” Three chapters of my dissertation are a history of abortion in the United States, moving from the beginning of the 19th century to the present day. What historical analysis reveals is not just the contingency of the ways of understanding abortion that we often uncritically adopt today. It also shows how those contingencies shape the present discourse, including the pro-x logic that is so often taken for granted as a necessity for “the abortion debate.”

I first argue that “pro-choice” and “pro-life” are both terms with co-constitutive meanings, which is not readily apparent in common use of the terms and which lends itself to rampant fallacies of composition and equivocation. I argue that these complicated, multiplicitous, and very often ambiguous meanings of “pro-life” and “pro-choice” make them unsuitable for use in political or moral conversation, even if they were divorced from a binary structure, which I do not take for granted as a possibility.

My second main argument is that the structure itself, which assumes two opposing pro-x stances as representing the “sides” of the abortion debate leads to an

inability to weigh metaethical nuance outside of the binary pro-x labels. My third main argument is that much of abortion discourse, especially inside the pro-x system relies on what I call “equivocal standards,” terms that are a critical part of a metric to determine the morality of an action, but which are broadly used in a fallaciously equivocated manner, whether intentional or unintentional. The use of equivocal standards form a condition for the possibility of a pro-x binary and are one of the central causes of the binary’s failure as a useful tool for public discourse. Equivocal standards also open the possibility for future action to deconstruct the pro-x binary through public recognition of the fallacious arguments that form the foundation for a pro-x logic.

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CHAPTER I: INTRODUCTION

Anna Yocca was 24 weeks pregnant when she unraveled a coat hanger, sat in the tub of her upstairs bathroom, and attempted to give herself an abortion. Alarmed at the amount of blood she was losing, the 31 year-old from Murfreesboro, Tenn. became concerned for her safety and called her boyfriend to take her to the hospital, where she delivered a living child via caesarean section. She was charged with attempted first-degree murder and later pleaded guilty to one felony count of attempted procurement of a miscarriage. Although Yocca was arrested in 2015, the story of her detainment would not be out of place in a newspaper one hundred years ago, although actual prosecution of women seeking abortions was nearly unheard of then.^{1,2}

Women's experiences of self-abortion, hospitalization, and criminalization are not new. But the polarization of two distinct narratives surrounding this story represents a relatively new phenomenon. Pro-choice activists flocked to Yocca's defense, with renowned abortion-rights advocate Jessica Valenti writing for *The Guardian* (U.S. edition) that "Yocca's desperation and inability to obtain a safe abortion prove that we are shamefully failing women."³ Pro-life groups such as the National Right to Life were quick to condemn the "grievous injuries" to the "viable unborn baby."⁴ The meaning and significance of this story, which became national news, is framed by whether Yocca is an attempted baby murderer or a martyr—a woman persecuted for trying to assert her right to bodily autonomy even at the risk of her own life and freedom. But in our current cultural polarity between "pro-choice" and "pro-life," it seems that she can only be one.

This Introduction opens up the problem of the life/choice binary, beginning with the dissonance of data on who adopts the labels of "pro-choice" and "pro-life" and the

significance of those identity labels to individuals and organizations. I then examine the difficulties of finding precise language around the topic of abortion and label the terms I will be using. I further establish the polarized situation of the abortion debate by looking at the large organizations on either side and examining their goals. Then, using three prominent texts in the field, I analyze some of the common themes in the existing literature on pro-choice/pro-life polarization, and I distinguish the aims of my own project from similar approaches, especially in the role it plays as a philosophical history. Lastly, I describe the scope of the chapters.

The Polarization of Identity

In her introduction to *Beyond Pro-Life and Pro-Choice: Moral Diversity in the Abortion Debate*, Kathy Rudy describes a billboard along the highway with a picture of a third-trimester fetus and the caption, “Abortion is Murder.”⁵ The viewer’s reaction to the billboard—agreement that the killing of a subject like that constitutes murder, immediate dismissal as manipulative conservative propaganda, or hesitation to accept the message of the billboard but willingness to think further about the moral implications of abortion—are already conditioned by the different realities of the diverse viewers, and those realities include divergent understandings of what “abortion” itself means. Most Americans arrive at that billboard with a pre-existing idea of what sort of thing abortion is, ideas which are cultivated through an individual’s religious, cultural, and political history (although that is certainly not an exhaustive list). The limitations of “pro-life” and “pro-choice” language make it difficult to capture nuances and assume a playing field in which everyone who speaks about “abortion” means the same thing, even if they disagree on approach.⁶ I would add that there must be an uncomfortable cognitive dissonance for

someone who self-identifies as pro-life or pro-choice, but has the third reaction to the billboard—one of uncertainty and moral questioning. The limitations of the life/choice binary are not simply restrictive in a public discourse on abortion; they restrict a subject’s ability to fully interrogate and develop their own beliefs, if they are already tied to a binaristic identity label. Rudy adds later in the chapter that, “categorizing people into one of these two camps simply obscures the larger worldviews which drive specific communities to have opinions about such ethical matters.”⁷

Even without the problems that Rudy raises, the labels themselves are fraught and often vague. The results of a 2015 Vox/PerryUndem poll found that 32% of respondents identified as “pro-choice,” 26% as “pro-life,” 21% as “neither” and 18% as “both.” As Sarah Kliff notes in the *Vox* article containing the poll results, this means that 39% of Americans do not choose a label in the ever-present abortion debate.⁸ A 2017 survey by the Pew Research Center shows that 57% of Americans support legal abortion in all or most cases, while 40% believe abortion should be illegal in all or most cases.⁹ In the Vox poll, 28% of respondents agreed with the statement that “abortion should be legal in almost all cases,”^a but that number rose to 37% when it was rephrased as “women should have a legal right to safe and accessible abortion in almost all cases.” A 2017 Gallup poll shows that 50% of Americans believe that abortion should be legal in certain circumstances, 29% believe it should be legal in all circumstances, and 18% believe it should be legal in no circumstances.¹⁰ After being asked the previous question on legality, the respondents were asked whether they identify as pro-life or pro-choice—

^a The massive discrepancy between this result and the Pew result may be attributed to the two-year difference (pre- and post- the 2016 election) or the slight shift of language in the phrasing of the responses, among other things.

49% chose “pro-choice;” 46% chose “pro-life.” It seems that beliefs about the legal status of abortion do not correlate to pro-life/pro-choice identity labels.

This is not a new revelation in the field of social and political philosophy, or even in popular political discourse. Many academics (and many more non-academics) have expressed concern with the way that “choice” and “life” are constructed as political opposites when they are, both definitionally and ideologically, not. Some of that literature will be reviewed later. It is not my intention to expound on the fact that there is a separation between the political language of pro-choice/pro-life and the popular attitudes of Americans on the legalization of abortion. Rather, I am interested in: the way that the concepts of “life” and “choice” seem to be firmly entrenched as fundamental pillars of understanding abortion, even when discussion is aimed at criticizing the discrepancy in terms; the historical emergence of this binary; and the philosophical problems that result from it.

This is one anecdote, but it is a familiar one: in 2017, Heath Mello, the Democratic candidate for the mayor of Omaha, Nebraska, became embroiled in controversy when he ran as a “personally pro-life” Democrat, despite claiming he “would never do anything to restrict access to reproductive health care.”¹¹ Part of this controversy came from his previous vote on an ultrasound bill that was distasteful to abortion-rights advocates, but headlines focused on his “pro-life” identity marker. In 2007, future Vice President Joe Biden wrote in his book, *Promises to Keep*, “I still vote against partial birth abortion and federal funding... but I will also vote against a constitutional amendment that strips a woman of her right to make her own choice.”¹² Consistent with this view, he maintained in a 2015 interview that, “I’m prepared to accept that at the moment of

conception there's human life and being... but I'm not prepared to say that to other God-fearing, non-God-fearing people that have a different view.”¹³

The position of these politicians (and many more, especially as Democrats gain ground in traditionally conservative districts) and of the millions of Americans who identify as both pro-life and pro-choice can be generally summarized thusly: “I believe in protecting life and so am personally opposed to abortion, but I do not believe that my personal opposition to abortion should (entirely) restrict other people's reproductive choices.” This standpoint reflects the changing attitudes about the binary of pro-choice and pro-life, but it still relies on the foundational concepts of choice and life. So it simply shifts the argument to say that the two can be compatible.

It's important to take note that the abortion discussion is still framed around these terms of pro-choice and pro-life, because even divorced from the binary, the terms themselves have the potential to obfuscate important political and ethical discussions about the procedure of abortion. As mentioned above, even the term “abortion” is fraught, although if I were to change it out for its frequently sanitized counterpart, i.e., “pregnancy termination,” it would not honestly represent the issue at hand. “Abortion,” precisely *because* it is so fraught, encompasses a range of ideas and emotions that “pregnancy termination” does not always. The topic of concern is not the words “life” and “choice” themselves or even their particular meanings centered around the reference point of abortion. Rather, it is the practice of using them in tandem, and with their “pro-” modifiers that gives particular meaning to the concepts as a pair. This is true whether they are being placed in opposition to one another or whether one is arguing that they (with their “pro-” modifiers) are compatible positions. In this dissertation, I introduce the term,

“pro-x” as a kind of umbrella term to refer to both “pro-life” and “pro-choice,” specifically as they exist in their current form, framed against each other. As we will see, there are a number of philosophical problems both with the dichotomy and with the terms “pro-life” and “pro-choice” as they are used today, and I wanted a term that quickly conveys that I am referring to this system of problems, as well as breaking up the tedium of reading “the pro-life/pro-choice dichotomy” hundreds of times. Both “pro-life” and “pro-choice” are pro-x terms, in addition to being part of what I consider a larger “pro-x” way of thinking about abortion.

Terminology

Since language is such an important part of my project, I take every precaution to be precise with my terms. Within discussions of abortion, there are small discrepancies in language that have the ability, when used without clarification, to make the project itself incoherent. “Pro-life” sometimes means the same thing as “anti-abortion,” but they have very different connotations. Not all “pro-choice” is “pro-abortion,” although the former is usually used synonymously with “pro-abortion rights.” “Termination” does not fully encompass the meanings of “abortion,” even if it usually refers to the same procedure. The *Associated Press Stylebook* recommends that journalists “use *anti-abortion* instead of *pro-life* and *pro-abortion rights* instead of *pro-abortion* or *pro-choice*,” probably to avoid the very tensions that this project explores.¹⁴ I take a similar approach to Daniel K. Williams in *Defenders of the Unborn*: unless noted or quoted, when referring to subjects or organizations, I will use the self-designated terms preferred by the subjects themselves. I may describe the National Right to Life Committee as having anti-abortion views, but,

for the purposes of this project, they are not an “anti-abortion” *group*, since that is not their primary way of identifying themselves (although they certainly do agree that they are against abortion). Some readers may object to this approach on the frequently argued grounds that certain groups who identify as “pro-life” are single-issue and have no opposition to the death penalty or in-vitro fertilization and are therefore really better described as “anti-abortion” than “pro-life.” My first response to this is that my goal is to interrogate the meanings and history of “pro-life” and “pro-choice,” so substituting other words in their place would be extremely counterintuitive, to say the least. My second response is that, for the purpose of remaining faithful to history, prioritization of terms used by the groups claiming them allows us to trace a more accurate picture of the movements as they emerged. Regarding “pro-life” versus “anti-abortion,” William notes that,

“[pro-life], along with the phrase “right-to-life,” has been the term favored by almost all activities in the movement since the late 1960s. If we want to approach the study of the pro-life movement as historians, rather than as champions of a particular political opinion, it would probably be best to set aside our presuppositions and attempt to understand the movement’s own use of terminology before passing judgment on it.”¹⁵

This same attention ought to be paid to the specificities of the term, “pro-choice.” The movement in favor of decreased restrictions on legal abortion largely did not use the term “pro-choice” until the 1970s, so it would be anachronistic to describe the National Organization for Women as “pro-choice” in 1968, even if they would meet certain criteria for that label by today’s standards. There was not a singular term favored by these groups prior to “pro-choice,” especially during the time when abortion rights were functionally a subset of the women’s liberation movement. So, when there is not a clear term favored by the subject(s) in question, I will use “pro-abortion rights,” “abortion

reform advocates,” or similar terms to refer to members of this movement prior to the emergence of “pro-choice.”

Perhaps the most difficult problem of terms is what to call the entity inside a pregnant woman. The most commonly used terms are heavily weighed down by political usage and moral connotations. A 2014 study published in the *British Journal of Social Psychology* found that participants who were asked questions about “foetuses” declared greater support for elective abortion than those asked about an unborn “child.”¹⁶ “Unborn child” immediately assumes personhood, which is not the question at hand, but which I also do not take for granted as a true or false reference. “Fetus” is similarly loaded with meaning since it is primarily used by the pro-choice movement in an effort to counter the baby-focused rhetoric employed by pro-life activists. “Fetus” is also not scientifically correct since over 90% of abortions occur during the first twelve weeks of pregnancy, during the majority of which, the “fetus” is actually a blastocyst or embryo.^{17 18} In most cases, I will, as before, use the term preferred by whatever subjects I am referring to: if I am describing a pro-life group’s concern for the “unborn child,” I will call it that, since their concern is directed at the potential loss of a child. If I am discussing the pro-choice talking point that a fetus is a clump of cells, I will use the word “fetus.” But there are times when I need a word to describe this entity that does not carry the baggage of “fetus” or “baby.” In those instances, I will use the term “conceptus.” “Conceptus” is used by some ethicists of abortion, such as Mary Anne Warren, as a synonym for “fetus,” and it is also used in other areas of ethics and medicine to refer to either a) specifically an embryo or b) to any product of conception, regardless of developmental stage.^{19,20} I use the latter definition. Other scholars writing on abortion have come up against this same

issue of the lack of any depoliticized language to describe the entity I am now calling the “conceptus.” One of the most interesting is Kristin Luker’s decision to use the word “embryo,” while acknowledging that it is not technically correct for much of the pregnancy.²¹ The lack of good options in this discussion—and the dearth of attempts to make better ones—is worth noting.

The Interests of Advocacy Groups

Given the number of Americans who identify as both or neither pro-choice or pro-life, it’s notable that of the largest social and political organizations interested in abortion, none express a mission that explicitly identifies as (or could even be coherently called) both pro-life and pro-choice. This is not a difficult position to imagine. There could be a non-profit entity that focuses on encouraging people to consider alternatives to abortion and educating (from either a religious or secular position) on fetal personhood and the value of life from the moment of conception *while* also supporting the legal right to have access to abortions, although, as I show in Chapter Four, this would not entirely resolve the problems of the pro-x binary.^b

Some groups come close. For example, Feminists for Life (FFL) is a pro-life organization that stays out of the political arena of legalization entirely, choosing to dedicate their resources to reducing the situations that contribute to women’s decisions to get abortions, such as poverty, lack of emotional and material support, and cultural

^b This may remind some readers of the 2018 U.S. Supreme Court ruling that “crisis pregnancy centers” (CPCs) cannot be legally compelled to display material on how to obtain an abortion. However, whether or not a CPC is required by law to supply that information does not change the goals or activism of that organization and so would not trouble the distinction of whether or not the group identifies as pro-choice. (Liptak, Adam. “Supreme Court Backs Anti-Abortion Pregnancy Centers in Free Speech Case,” *The New York Times*, June 26, 2018. A1.)

pressures. Researching FFL, it is difficult to determine whether they have any political stances on legalization at all. However, the FAQs portion of their website provides some insight (emphasis mine):

We should criminalize anyone who withholds child support, fires a woman from her job because she is pregnant, refuses to accommodate her pregnancy, expels her from school, or threatens violence—any act that forces her to choose between sacrificing her child and sacrificing her education, career plans, or safety from violence. *We believe that we should hold responsible those who profit from women’s pain—especially the abortion industry.*²²

Although the language is carefully crafted to avoid an explicit claim that abortion should be illegal, the implication is strong. Although calling them “anti-choice” might be premature, it would, at the very least, be inaccurate to label them “pro-choice.” I reached out to Feminists for Life, asking for clarification on their political stance toward abortion. The response I received was as follows: “FFL’s mission is to systematically eliminate the reasons that drive women to abortion, in particular through resources and support. For legal issues, I would refer you to Americans United for Life or other organizations engaged in the legal side of things.” A second email asking for a more direct answer on whether they had any official position on the legality of abortion went unanswered. Still, FFL, along with a few similar but smaller groups such as New Wave Feminists, is an outlier among modern pro-life organizations in its refusal to openly call for an end to legalized abortion.

Most pro-life organizations favor an approach that advocates for legal restrictions on abortion (usually with the eventual goal of a total ban). The National Right to Life Committee (NRLC), founded in 1968, describes itself as “America’s oldest and largest pro-life organization.”²³ On its website, NRLC names its mission: “to protect and defend the most fundamental right of humankind, the right to life of every innocent human being

from the beginning of life to natural death.”²⁴ Their areas of concern, addressed through education and political action, include abortion, as well as euthanasia, embryonic stem-cell research, physician assisted suicide, and infanticide. On June 1, 2018 (and again on June 12, 2018), I contacted the organization to ask what percent of their budget goes towards fighting abortion, compared with its other target issues (euthanasia, etc.). At the time of this writing (August 6, 2018), I have not received a response. In 2017-2018, NRLC endorsed twenty-one anti-abortion bills in Congress (and two resolutions), four anti-euthanasia bills (and two resolutions), two child tax-credit bills for pregnant women, and one bill opposing embryonic stem-cell research.²⁵ State-level affiliates of NRLC also endorse and oppose bills appearing in state legislatures. While this cannot be entirely indicative of NRLC’s priorities since whether or not a bill appears in Congress at all is at the discretion of the legislators themselves, NRLC does help to craft pro-life legislation, which primarily targets abortion access. Two of the 2017-2018 bills based on NRLC model legislation that have gained the most national attention are H.R. 36, which would ban abortion after 20 weeks and H.R. 1192, which would ban “dismemberment abortions,” more commonly known as Dilation and Evacuation (D&E).^{26 27 28 29}

H.R. 36 and H.R. 1192 represent two of the most common legislative approaches to regulating abortion post-*Roe*, that is, banning abortions earlier in the pregnancy and placing expensive or burdensome restrictions on providers and abortion-seekers, which make it more difficult to access abortion without explicitly making it illegal. As of 2008, D&E procedures account for 95% of abortions performed during the second trimester of pregnancy.³⁰ Legislation banning this procedure would have functionally (although not entirely) the same effect as banning second-trimester abortions altogether. Most other

large pro-life groups (such as the Family Research Council and Susan B. Anthony List) share these goals. Other groups, such as Live Action and Operation Rescue, support anti-abortion legislation but focus their own efforts on education, usually through the dissemination of shocking videos or direct-action tactics like protesting abortion clinics and “sidewalk counseling.”^{31,32}

The purpose of the above examples is to support the idea that “pro-life” has become a largely political position, focusing on legal changes rather than the more material changes advocated for by groups such as Feminists for Life. The legality focus of pro-choice groups is much more obvious, because while the concept of protecting life may manifest in many forms, the concept of protecting the right to make a choice has inherent legal connotations. There are smaller self-identified pro-choice groups such as the Chicago Abortion Fund that do primarily work towards greater material, rather than legal, access to abortion, but all of the largest pro-choice organizations (NARAL Pro-Choice America, Planned Parenthood Action Fund, Center for Reproductive Rights) are focused solely on legal protections.³³

This shared focus on legal access to abortion by the largest pro-life and pro-choice organizations has further obfuscated the conversation on the use of those terms since it lends itself to the assumption that “pro-choice” and “pro-life” are always opposite sides of the same coin, with the former opposing access to legal access to abortion and the latter favoring legal access. It would be all too easy to extrapolate from media coverage of pro-choice and pro-life groups and their legal positions that each has a single, coherent position shared by every group and individual who claims the title. Clearly, this is not the case. As the Vox/PerryUndem poll at the beginning of this chapter indicates

(and as I will further explore), the disconnect between the political goals of pro-choice/pro-life organizations and the moral, social, and otherwise extra-political meanings of those terms can make the use of the “pro-choice” and “pro-life” difficult to use effectively in productive discourse on abortion.

Literature on the Dichotomy

In *Beyond Pro-Life and Pro-Choice*, Kathy Rudy frames the abortion debate not only in terms of ethical differences but also differences in opinion on the very nature of abortion.³⁴ The pro-choice/pro-life dichotomy that Rudy dissects is either rooted in a tacit agreement of what abortion is (but a disagreement over its morality), or it is rooted in a disagreement over the nature of abortion itself. Rudy argues that both “roots” are real and that different kinds of groups do not actually mean the same thing when they say “abortion.” To better understand divergences in the nature of abortion, she examines four groups: the Roman Catholic church, evangelical Christians, liberals, and feminists. Rudy then analyzes what abortion means to each of these communities. Rudy claims that the binarization of pro-choice and pro-life, is one of the problems contributing to our inability to coherently speak of abortion. This is paralleled by the binarization of helping the pregnant woman or helping the unborn child, two subjects pitted against one another because “the law can only conceptualize whole, unified subjects.”³⁵ The pregnant woman is clearly already a subject and the conceptus is either a full subject with full rights or it is not a subject at all.

Rudy argues that the path to better understanding about abortion comes from recognizing our “fragmented” identities and embracing the plurality of influences and

backgrounds, not only in American society, but in the individual. Our projects could be complementary; Rudy builds a case for repeal of abortion laws, so that rather than “legalizing” abortion by putting it under government control, it should be removed from the political sphere altogether and the focus reoriented to the community norms that shape its meaning.³⁶

Laurie Shrage, in her book *Abortion and Social Responsibility: Depolarizing the Debate*, starts from the same premises as Rudy, that there is a political polarization surrounding abortion which makes it difficult to meaningfully address it, and arrives at a nearly opposite conclusion, in favor of increased government regulation. Shrage argues that in order to win greater popular support for abortion, its advocates should deprioritize the language of *Roe*, that women ought to have access to abortion through the second trimester because of their constitutional right to privacy—and instead focus on giving women access to reproductive healthcare and easier access to early abortions while limiting access to the later-term abortions that do not have wide public support.³⁷ The crux of Shrage’s approach is an argument in favor of a “moderate” position on abortion, which if adopted on a large scale would depolarize the abortion debate from where it currently stands. She claims that the harsh and often irreconcilable dichotomy between “pro-life” and “pro-choice” positions have created so many barriers to abortion for women in the United States, that an agreement to increase restrictions on abortion while keeping it legal in some cases would actually increase accessibility by decreasing the political and social conflict surrounding abortion rights. Shrage agrees with Rudy that the terminology of “rights” in regards to abortion leads to some of the intractability of its opponents and advocates.

Kristin Luker's Pulitzer Prize-nominated *Abortion and the Politics of Motherhood*, addresses the history of the pro-life/pro-choice conflict and aims to "discover how people come to differ in their feelings about the rightness or wrongness of abortion."³⁸ Luker argues that abortion has become an important topic of public debate largely because it is so symbolic. Questions on the morality of abortion are also questions about the status of motherhood and the validity of traditional gender roles; they are questions about scarcity and who deserves allocated goods. Abortion is the most visible arena in which people can make (or debate) determinations about *personhood* that have consequences far beyond the ending of pregnancies. Of the three books mentioned, *Abortion and the Politics of Motherhood* is the most thorough in its historical approach. Luker looks at evidence from the 19th century and shows how the treatment of abortion during that time period shaped its role in the 20th century, with an emphasis on how different sides of the debate relate their beliefs on abortion to beliefs on sexuality, mothers, family, and children. As with Rudy and Shrage, she notes the particular movement of dialogue towards rights-based language. However, Luker's work is not an attempt to "solve" the problem of abortion or even offer ways that the dialogue can change for the better. Like my own project, it is primarily about revealing what the problem of abortion is.

I've chosen these three texts to highlight in this introduction because they best exemplify two of the most common approaches to abortion in social and political theory: abortion as symbolic of another, larger cultural question and abortion as a legal problem to be pragmatically mitigated. Both of these topics are important in their own right, but neither can be sufficiently addressed without examining the historical conditions for the

“problems” of the present. Rudy and Shrage draw out the struggles of the era directly pre-*Roe* but do not seem to take a serious interest in the series of events and occurrences that made those struggles possible. Luker gives a much more thorough history of abortion in America but with an eye specifically towards her areas of interest—sexuality, families, and technology. I believe we can merge the needs of these philosophy texts with the excellent histories of abortion already written by James Mohr, Leslie Reagan, and Daniel Williams, among others.

Philosophical History

Although there have been sociological, historical, and philosophical investigations of the life/choice dichotomy, those projects have not produced (and, perhaps, have not intended to produce) a philosophical investigation of the problem that draws deeply on the rich history of the emergence of that binary. This history is important both theoretically and strategically, in order to overcome the rhetorical and logical disconnects plaguing the topic; however, history cannot do the work alone because it must be used to address the philosophical problem at hand. The problem that I reference is the following: The terms “choice” and “life,” in relation to the abortion debate, have become opposites, each encompassing an ideology that for the most part, places itself at odds with its counterpart. Perhaps there are policy solutions that can mitigate popular discomfort with this animosity, as Shrage suggests. Perhaps the inherent fragmentation of “abortion” should lend itself to legal repeal, as Rudy suggests. Perhaps there are moral and legal grounds under which both “life” and “choice” can be acknowledged or protected to a degree, as many medical ethicists, including Judith Jarvis Thomson and Jane English

have suggested.^{39 40} But in order to fully evaluate any of those arguments, there must be some grounds on which to understand the meaning of “life” and “choice,” and those terms, I will argue, are partially constituted by their relationship to one another. This is continuously reinforced in their use. The questions to be answered are, how did those terms historically emerge into their contemporary meanings, how do those respective meanings continue to self-replicate, and what philosophical problems emerge from their continued use?

While some Foucauldians might spot the similarities between this project and a traditional genealogy, I am not sticking closely to that format, in large part because an emphasis on Power/Knowledge, which is the foundation both for Foucault’s genealogies and subsequent, prominent contemporary works (such as those by Ellen Feder or Ladelle McWhorter), would alter my goals.^{41,42,43} However, there are certain concepts I borrow from Foucault’s work, primarily the method of *problematization*. Problematization approaches ideas/assumptions that are both foundational to other kinds of knowledge and are taken for granted and shows the historical contingency of those ideas and the processes, figures, events, and institutions that have come together to make such an assumption possible. Colin Koopman defines these sorts of ideas: “submerged problems are those that condition us without our fully understanding why or how.”⁴⁴ That “conditioning” shapes not only our ways of knowing but also our practices and activities. The assumption that does the conditioning must be deeply seated in our consciousness and difficult to work around. Raymond Geuss explains that the targets of problematization are “the apparently self-evident assumptions of a given form of life and the (supposedly) natural or inevitable and unchangeable character of given identities.”⁴⁵

While Foucauldian problematization is not meant to offer normative critique to condemn or validate those assumptions, the destabilization of those deep and influential ideas and the revelations of their contingency can become the ground for future transformation of our knowledge and our practices.

I wish to situate the pro-choice/pro-life dichotomy as one of those deep-seated assumptions that require excavation and historical analysis. Unlike Foucault's genealogies of sexuality or discipline, I do not aim to prove that "pro-choice" and "pro-life" dictate the foundation of our very identities, because not everyone cares about abortion or understands themselves to be even tangentially related to those terms. However, the terms do dictate a foundation of knowledge and practices surrounding abortion, which, as I have shown above, is a critically important facet of American social and political life. "Pro-choice" and "pro-life" *are* identity markers that are taken seriously well outside the scope of political activism. I have also shown the difficulty of discussing abortion without the use of those concepts and how rarely it occurs. What is to follow in the coming chapters is the historicization of this dichotomy and the philosophically problematic, and sometimes logically fallacious, issues arising from it.

Scope of Chapters

Chapter Two, "Medicalization and Regulation in the Mid-19th Century," will address the changes to U.S. abortion policy that occurred during the 19th century. Highlighting the role of physicians in criminalizing abortion, this chapter will also examine the medicalized discourse that was used to justify their campaign and the transition in the meaning of "pregnancy" that occurred during that century.

Chapter Three, “The Abortion Factions of the Early 20th Century,” will examine the factions and coalitions that formed in the early 20th century around birth control and abortion. This chapter takes a closer look at the positions of the first-wave feminists, who are often cited in contemporary pro-x arguments, and the role of eugenics in the solidification of a (limited) abortion reform and repeal movement.

Chapter Four, “The Rhetoric of Rights,” will show the transition of disparate factions and coalitions into the two single-issue movements that would eventually become “pro-life” and “pro-choice.” This transition largely hinges on the impact of *Roe v. Wade*, but also deals with religious coalitions and political partisanship, each of which factored into the preference for rights-based rhetoric in abortion discourse.

Chapter Five, “The Morality Problems of Pro-X,” will identify the common moral positions that inform each pro-x term in order to build a rigorous philosophical definition of each term that takes into account the multiplicitous nature of such a definition. Chapter Four will also identify what I consider to be the two primarily philosophical problems with the pro-x dichotomy.

Chapter Six, “Equivocal Standards and Identities,” will introduce the concept of “equivocal standards,” which helps to further elaborate the philosophical problems within the pro-x binary and entrenched in abortion discourse even beyond that binary. Chapter Five will also further consider the role of identities, both in terms of demographic groups’ roles in abortion activism and the use of pro-x terms as identity markers.

Chapter Seven, the conclusion, will address the use of historical analysis in approaching the philosophical problems of the pro-x binary and discuss the possible uses of the philosophical conclusions revealed in this project.

The Appendix is a timeline containing some significant abortion-related events in U.S. history.

Notes to Chapter I

¹ Leslie J. Reagan, *When Abortion was a Crime: Women, Medicine, and Law in the United States, 1867-1973*. Berkeley: University of California Press, 1997. 167-168.

² Reagan, Leslie J. "About to Meet Her Maker": Women, Doctors, Dying Declarations, and the State's Investigation of Abortion, Chicago, 1867-1940," *The Journal of American History*, March 1991, 77(4): 1243-1244.

Where women were detained, it was most common for police to threaten them with the public humiliation of releasing their names until they divulged information about any persons who had helped them procure the abortion. Women who self-induced their miscarriages were rarely, if ever, prosecuted themselves.

³ Jessica Valenti, "Abortion by wire coat hanger is not a thing of the past in America," *The Guardian*. Dec 15, 2015.

<<https://www.theguardian.com/commentisfree/2015/dec/15/wire-coat-hanger-abortion-stories-united-states>>

⁴ David Andrusko, "Further reflections on the baby who survived Anna Yocca's attempted coat-hanger abortion," *National Right to Life News Today*. Dec. 17, 2015.

<<https://www.nationalrighttolifenews.org/news/2015/12/further-reflections-on-the-baby-who-survived-anna-yoccas-attempted-coat-hanger-abortion/>>

⁵ Kathy Rudy, *Beyond Pro-Life and Pro-Choice: Moral Diversity in the Abortion Debate*. Boston: Beacon Press, 1996. Xi

⁶ Rudy, xii

⁷ Rudy, xxv

⁸ Sarah Kliff, "What Americans think of abortion," *Vox*. April 8, 2015.

<<https://www.vox.com/2018/2/2/16965240/abortion-decision-statistics-opinions>>

⁹ "Public opinion on abortion: views on abortion 1997-2017." Pew Forum. July 7, 2017.

<<http://www.pewforum.org/fact-sheet/public-opinion-on-abortion/>>

¹⁰ "Abortion," Gallup. <<http://news.gallup.com/poll/1576/abortion.aspx>>

¹¹ Emily Crockett, "What's missing from the debate about pro-life Democrats," *Rolling Stone*. Apr. 24, 2017. <<https://www.rollingstone.com/politics/features/whats-missing-from-the-debate-about-pro-life-democrats-w478484>>

¹² Patrick Caldwell, “Biden’s abortion record could cause him problems in a Presidential bid,” *Mother Jones*. Oct. 1, 2015. <<https://www.motherjones.com/politics/2015/10/joe-biden-abortion-roe-wade/>>

¹³ “Vice President Biden on Pope Francis, Faith, and Public Life,” America Media. Sep. 21, 2015. <papalvisit.americamedia.org/2015/09/21/biden-interview/>

¹⁴ *The Associated Press Stylebook*, 46th ed. New York: The Associated Press. 2014, 2-3. Emphasis in original.

¹⁵ Daniel K. Williams, *Defenders of the Unborn: The Pro-Life Movement before Roe v. Wade*. New York: Oxford University Press, 2016. xi.

¹⁶ M. Mikołajczak and M. Bilewicz, “Foetus or child? Abortion discourse and attributions of humanness,” *British Journal of Social Psychology*, 2015. 54: 500-518

¹⁷ “CDCs Abortion Surveillance System FAQs,” Centers for Disease Control and Prevention. <https://www.cdc.gov/reproductivehealth/data_stats/abortion.htm>

¹⁸ Mayo Clinic Staff, “Fetal development: the first trimester, Mayo Clinic. <<https://www.mayoclinic.org/healthy-lifestyle/pregnancy-week-by-week/in-depth/prenatal-care/art-20045302>>

¹⁹ Mary Anne Warren, “On the Moral and Legal Status of Abortion.” *The Monist*, 1973, 57(4).

²⁰ Alexandre Mauron, “Embryo and Fetus: Development from fertilization to birth,” *Encyclopedia of Bioethics*, 3rd ed. Ed. Stephen G. Post. New York: Macmillan Reference, 2004. 708.

²¹ Kristin Luker, *Abortion and the Politics of Motherhood*. Berkeley: University of California Press. 1984. 2.

²² “FAQ: Does Feminists for Life want to criminalize women for having abortions?” Feminists for Life. <<http://www.feministsforlife.org/faq/#criminalize>>

²³ “About NRLC,” National Right to Life. <<https://www.nrlc.org/site/about/>>

²⁴ “National Right to Life Mission Statement,” National Right to Life. <<https://www.nrlc.org/site/about/mission/>>

²⁵ “National Right to Life: Issues & Legislation,” CQ Engage. <http://capwiz.com/nrlc/issues/bills/>

²⁶ “NRLC urges co-sponsorship of Pain-Capable Unborn Child Protection Act,” *National Right to Life News Today*. Sep. 27, 2017. <<https://www.nrlc.org/abortion/fetalpain/nrlc-urges-co-sponsorship-of-pain-capable-unborn-child-protection-act/>>

²⁷ “NRLC calls on Members of Congress to co-sponsor Dismemberment Abortion Ban Act,” *National Right to Life News Today*. Jan. 12, 2018. <<https://www.nationalrighttolifenews.org/news/2018/01/nrlc-calls-members-congress-co-sponsor-dismemberment-abortion-ban-act/>>

²⁸ “Pain-Capable Unborn Child Protection Act of 2017 (H.R. 36),” *Re.Wire News Legislative Tracker*. Last updated: Oct. 13, 2017. <<https://rewire.news/legislative-tracker/law/pain-capable-unborn-child-protection-act-2017-h-r-36/>>

²⁹ “‘Dismemberment Abortion’ Act of 2017 (H.R. 1192),” *Re.Wire News Legislative Tracker*. Last updated: Nov 7, 2017. <<https://rewire.news/legislative-tracker/law/dismemberment-abortion-ban-act-2017-h-r-1192/>>

³⁰ K. O’Connell et al., “Second-trimester surgical abortion practices: a survey of National Abortion Federation members,” *Contraception*, 2008, 78(6):492–499.

³¹ “Our Work,” Live Action. <<https://www.liveaction.org/what-we-do/our-work/>>

³² “History,” Operation Rescue. <<https://www.operationrescue.org/about-us/history/>>

³³ “Mission,” Chicago Abortion Fund. <<http://www.chicagoabortionfund.org/mission-and-vision.html>>

³⁴ Rudy, xii.

³⁵ Rudy, xxiv.

³⁶ Rudy, 144.

³⁷ Laurie Shrage, *Abortion and Social Responsibility: Depolarizing the Debate*. New York: Oxford University Press, 2003.

³⁸ Luker, 3.

³⁹ Judith Jarvis Thomson, “In Defense of Abortion”

⁴⁰ Jane English, “Abortion and the Concept of a Person,” *Canadian Journal of Philosophy*, Oct. 1975, 5(2): 233-243.

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- ⁴¹ Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977*. Ed. Colin Gordon. Trans. Colin Gordon, et al. New York: Pantheon Books, 1980.
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- ⁴² Ellen Feder, *Family Bonds: Genealogies of Race and Gender*. Oxford: Oxford University Press. 2007
- ⁴³ Ladelle McWhorter, *Racism and Sexual Oppression in Anglo-America: A Genealogy*. Bloomington: Indiana University Press, 2009.
- ⁴⁴ Colin Koopman, *Genealogy as Critique: Foucault and the Problems of Modernity*. Bloomington: Indiana University Press, 2013. p. 1.
- ⁴⁵ Raymond Geuss, “Genealogy as Critique.” *European Journal of Philosophy*, 2002, 10(2): 211.

CHAPTER II: MEDICALIZATION AND REGULATION IN THE MID-19TH CENTURY

The goal of this chapter is threefold: to summarize the changes in abortion in the 19th-century United States, to contextualize the beginnings of (what we would now call) the pro-life movement, and to analyze the role that perceptions of women's "choice" played in 19th century abortion politics. In colonial America, there were no statutory laws (as compared to common law) regulating abortion. The British common law regulations that did exist were guided by the Quickening Doctrine, and abortions were rarely prosecuted. After the U.S. declared independence, there was little change in *de facto* policies. Since there were no statutes governing abortion, it was considered to still be under the jurisdiction of British common law, and local American courts interpreted that common law in a multitude of ways. Over the course of the 19th century, there was a boom of abortion-related industries and a backlash from formally trained physicians, who opposed abortion for a number of reasons that will be addressed below. The formation of the American Medical Association (AMA) and their subsequent anti-abortion campaign changed abortion policy across the United States and contributed to a massive shift in discourse around abortion, which was increasingly considered a medical procedure, subject to the discretion of physicians rather than pregnant women.

The Quickening Doctrine

The Quickening Doctrine held that the conceptus was not alive until the mother could feel it kick, usually between the fourth and sixth month of pregnancy.¹ Therefore, prior to quickening, the conceptus was not recognized as its own entity in criminal cases, and the termination of a pregnancy was criminal only after the quickening, when the

conceptus had shown itself to be a separate entity from the mother by its ability to move. This was difficult to establish with certainty. In one case from 1809, the Massachusetts Supreme Court, following the principle of the Quickening Doctrine, dismissed a case on the grounds that the prosecution had not been able to prove that the woman had passed the point of quickening.² This same defense was used in cases on all levels of the U.S. justice system, until the Quickening Doctrine was overturned by statutes in the mid-19th century.

Even after quickening, the crime of termination was considered differently from the murder of a born child and was punished less harshly.³ The question of whether a conceptus was alive had been the subject of moral debates between philosophers and theologians for thousands of years (Aristotle raises this question in *The History of Animals*⁴), so the Quickening Doctrine was a practical measurement of pregnancy in the common law; before the medical technology developed in the nineteenth century, there was no other reliable way to judge the pregnancy of the woman.

Britain moved toward abortion regulation long before the United States. The Parliament of the United Kingdom formally banned all abortion, even before quickening, in 1803, but a court case in Massachusetts in 1812, *Commonwealth v. Bangs*, reaffirmed the quickening boundary in the United States and remained the precedent for several decades. James Mohr notes that, pre-quickening, the common prevailing belief in the United States was that the conceptus was a *potential* life, an “inert non-being.”⁵ Although women went to physicians for some abortions, home medical manuals were often a source of information on abortion, sometimes referred to as an antidote for “obstructed menses.” William Buchan’s *Domestic Medicine* and Samuel Jennings’ *Married Lady’s*

Companion gave folk remedies and potion recipes but also recommended physical intervention, such as punches to the stomach.⁶ Midwives were taught abortion techniques (including post-quickening abortions) in order to fix situations of a dead conceptus needing removal or a botched self-attempted abortion. However, midwives were cautioned to not allow themselves to be tricked into performing criminal abortions. While Mohr's primary distinction is between "regular" and "irregular" health practitioners, Janet Farrell Brodie suggests that we ought to consider three medical traditions concerning abortion in the early part of the 19th century. In addition to "regulars" and "irregulars," Brodie formally distinguishes "domestic medicine," or the practice of self-treatment, often with herbal folk-remedies and the guidance of medical companion books.⁷

Doctors trained in the U.S. or the U.K. were also trained in complex abortion techniques, to be used in lieu of dangerous cesarean sections in cases of medical emergency. However, with their knowledge of abortion, there was great pressure on physicians from their clients to perform treatments for amenorrhea (obstructed menses), even when they suspected pregnancy. "Regular" physicians (those with formal medical training) were also expected to safely conclude abortions that had been attempted and botched either by an abortionist or by the woman herself. Doctors could never be found legally liable for performing abortions that they either did not realize were attempts to end pregnancy or what were interventions to save the woman. At this time, at the beginning of the nineteenth century, there was no reliable record of the number of abortions performed, but there is evidence that most were done because of the fear of the social consequences of bearing illegitimate children, rather than as a family planning mechanism.⁸ Because abortion was associated with unfortunate women in desperate

circumstances, Americans were generally compassionate and tended to look the other way, even for abortions after quickening.⁹ This was compounded by the research of the day, which considered abortion to be generally a safe procedure.

The Business of Abortion

Part of the increased visibility, public acceptance, and frequency of abortion during the 19th century came from its rapid commercialization. Beginning in the 1840s, abortion became a recognizable industry, and advertisements for abortion services were common. The figurehead of this movement was “Madame Restell,” an abortion specialist with employees, advertisements, and branch offices in three cities. Brodie notes that Restell quickly rose to notoriety (and financial success) in part because of the extensive media coverage she received, outside the advertisements she paid for. Her business was frequently criticized by the *New York Herald*, even as they ran her advertisements. She also appeared in an 1844 novel by Thomas Low Nichols.¹⁰ In the mid-19th century, “Restellism” became a euphemism for the entire practice of commercialized abortion.¹¹ With the increasing visibility of abortion came news stories of botched operations, dead women, and the sensationalized trials of the abortionists responsible. While estimations put the abortion rate at one out of thirty live births prior to 1840, it rose to one in five births during that decade.^{12,c} As abortion became more visible, it became more frequent, which made it even more visible.¹³ Mohr comments that it is difficult to be precise about the abortion business as it appeared during that time, since no business records survive

^c Mohr clarifies that while there are no recorded numbers of the abortion rate prior to the 1840s, he has gone to great lengths to attempt to estimate the numbers using records of live births, illegitimate pregnancies, and other adjacent data. While the estimates of pre-1840 numbers are “softer” than the estimates of numbers in the 1850s, both should be noted as contemporary reconstructions. (Mohr, endnote 12 on p. 275)

and there are no existing (or available) in-house histories from the pharmaceutical companies who produced some of the abortifacient pills. Research conducted by Ely Van de Warker, a New York physician and pharmacologist, in the late 1860s and early 1870s studied eleven leading abortifacient pills and found that while some of them were effective, many (especially those that were the most effective) were also quite dangerous, employing toxins such as ergot and savin oil in order to induce abortions.¹⁴ Brodie notes that, “as late as 1939,” the Federal Trade Commission banned the sale and advertisement of a number of such medicines designed to “induce a delayed menstruation,” due to the associated health hazards.¹⁵ The years between 1840 and 1880 saw the rapid growth of the pharmaceutical industry as a whole, with abortifacient pills constituting only part of that growth; many of the herbal remedies of the time were distributed directly from apothecaries, rather than through the prescription of a physician. Van de Warker notes that these apothecary remedies were very common and appeared to be effective.

Beginning in the 1830s, there was a rise in “private clinics for women.” While these clinics mostly started for the purpose of treating venereal disease, they had become a common site of abortions by the 1840s and 50s. Medical advice for women was also still distributed in the “medical companion” books for ladies. One prominent guide, *Married Woman’s Private Medical Companion*, published in 1847, placed an emphasis on female health and happiness, arguing that family sizes should be limited if it promoted that end. This was especially true in light of the physical risks of childbirth and the constraints of large families on the working class, both of which were noted in the book. By this time, it was acknowledged that abortion was generally safer than childbirth. This was bolstered by the invention of several new medical technologies for abortion in the

1830s and 1840s, including a suction system and a popular technique of administering daily electric shocks to the abdomen, as well as an increase in the prevalence of auto-abortive instruments.¹⁶

In addition to the prevalence of the Quickening Doctrine, there were also those who believed life did not begin until the birth itself. Russell Trall, a popular health reformer, gave a talk in which he claimed that the conceptus “had no volition, no mental or soul life” until the lungs expanded at the time of birth.¹⁷ Although many of them openly disapproved, almost all of the women’s health manuals of the time mention abortion. These health manuals, in addition to an increase in public lecture and public school education on female anatomy, broadened women’s understanding of their own bodies, which Frederick Hollick, a physician and educator, credits with the increase in abortions after 1840.¹⁸ Many regular physicians opposed anatomy lessons for girls on these grounds.

Besides the protests of regular physicians, many of whom felt tricked or coerced by female patients who concealed pregnancies in order to get treatments which would end in miscarriage, abortion, especially prior to quickening, was not considered a serious issue by the American public. Mohr adds that because of this attitude, pre-quickening abortion was just a fact of life; most women getting abortions in the mid-19th century never had to face the “moral agony” of their 20th century counterparts.¹⁹ He postulates that the main concern of women seeking abortions was probably their own health and safety rather than questions about the morality of what they were doing. Abortion, he adds, was probably considered more similar to contraception than to murder.

By The Numbers

Although generally opposed to the practice, regular physicians were some of the best informed on the rates of abortion due to their confidential relationships with their female patients. There were some attempts among physicians to quantify these numbers by those committed to scientific research. One project of note was conducted by Edwin Hale, a prominent homeopathic physician in 1866. He concluded that 1 in 5 pregnancies were aborted, that there was 1 stillbirth for every 3 live births, that (for safe kinds of) abortion procedures the fatality rate was 1/1000, and that, perhaps most surprising, nearly every married woman had had an abortion: “there is not one married female in ten who has not had an abortion, or at least attempted one!”²⁰ In 1867, he claimed that 2 out of every 3 conceptions was aborted, but this second report was intended for the general public, so Mohr comments that it was likely propaganda.

In 1868, Storer and Heard attempted a large-scale calculation of abortion rates, leading to a monograph aimed at lawyers and physicians. Using official figures from the New York City Registrar of Vital Statistics, they concluded that 1 in 4.04 pregnancies were aborted.²¹ This report reflects a larger goal of the statistical measurement of abortions in the late 1860s. In 1800, the average woman give birth to 7.04 children. By 1900, that number had decreased by nearly 50%, to 3.56 children.²² The declining birth rate heavily correlates with the availability of abortion, especially between 1840 and 1850. Mohr comments (in 1978) that modern demographers claim that abortion, alongside contraception, has played a major role in the demographic transitions of other developing nations that have lowered their birth and death rates. Although both abortion and contraception were a part of many 19th-century couples’ commitments to smaller

families, abortion was an important backup for the new and often unreliable contraception methods of the time.

Physicians Against Abortion

Between 1821 and 1841, ten states and one territory passed legislation criminalizing certain kinds of abortion rather than leaving it to judges' interpretations of common law. Connecticut was the first state to explicitly criminalize post-quickening abortions in 1821. The law in question was mostly concerned with the poisoning of women who were attempting abortions, and it targeted apothecaries and physicians, but not the women themselves, as they were considered to be the victims of these poisoning attempts. It did not criminalize abortions using methods other than poison, and it reaffirmed the Quickening Doctrine. This shows a continued commitment to the belief in women's right to end an early pregnancy, even at her own risk.²³ As Mohr notes, America's first abortion law wasn't actually concerned with abortion itself.²⁴

The British law passed in 1803 that made post-quickening abortions via poison a capital crime also criminalized all abortions pre-quickening as a transportable offence (subject to exile in a penal colony such as Australia). The Americans adopted this concern for poisoning but did not similarly dilute the Quickening Doctrine. In 1828, the U.K strengthened its abortion laws, adding a forbiddance of instrumental methods of abortion to the poisoning law. Connecticut followed suit but again applied the changes only to abortions attempted after quickening. Since post-quickening abortions had always been disallowed under the common law, the Connecticut legislation only formalized the common law rather than adding to it. Throughout the 1820s, Missouri, Illinois, and New

York all created similar laws, although the former two did not specify that abortion was only criminal post-quickening. Still, the Quickening Doctrine remained *de facto* law since one had to prove that someone intended to end a pregnancy prior to quickening and thus prove that they knew there *was* a pregnancy prior to quickening, which was difficult to do. Mohr suggests that Missouri and Illinois' failure to distinguish between pre- and post-quickening abortions was probably a reflection of how much the Quickening Doctrine was taken for granted, rather than attempts to eliminate the doctrine. In 1827, regulars pushed tough abortion legislation in New York. The law that passed that year banned abortions as a whole, made the unauthorized practice of medicine a misdemeanor, and required consultation with two physicians for a therapeutic abortion (which had always been allowed per the common law). The new law ran counter to the strong anti-elitist spirit of the age, and there was huge backlash to these new restrictions. Irregulars (midwives, homeopaths, and other health practitioners who were not formally trained) organized protests, and between thirty and forty thousand people signed petitions opposing the strict medical regulations. However, this prohibition of abortion (which could be interpreted to include pre-quickening abortions) was rarely enforced.²⁵

Mohr claims that legislators tended to oppose abortion but were initially careful and restrained when crafting laws. As abortion became a common practice among wealthier married women, lawmakers, egged on by physicians, began to reconsider that restraint. While state policies on abortion were in a transitional period between 1840 and 1860, there was no national consensus on how to regulate abortion, and new laws varied radically between states.²⁶ Following two high-profile trials of abortion providers in 1845, the Boston Medical Journal came out against “stifling human life in utero” and put

heavy pressure on the legislature to enact change. Shortly thereafter, Massachusetts policymakers became the first to craft legislation focused exclusively on abortion (as opposed to being part of a larger change in the criminal code). The new law made attempting an abortion a misdemeanor, and it became a felony if the woman died as a consequence.²⁷ Mohr notes that this had little effect on actual abortion practices in Massachusetts. Between 1849 and 1857, there were only 32 trials related to abortion in Massachusetts and zero convictions.²⁸

New York also passed an anti-abortion bill in 1845. Much more comprehensive than its Massachusetts counterpart, it also included an unprecedented measure holding the woman obtaining the abortion (whether performed by another or self-induced) to be criminally liable. While that section of the law was never enforced during the 19th century, Mohr posits that it (and similar laws that would follow it) were the product of frequent, grisly newspaper stories about women dead from botched abortions, and the law was intended to discourage women from possibly injurious abortion attempts. Based on previous attempts at abortion legislation, lawmakers knew that disincentivizing a single party (the abortionist) would not remove the demand for abortion and thus would not be effective at stopping the practice.²⁹ This idea that the government had a job to save women from themselves was prevalent, often coupled with legislators' opposition to "checks on population."³⁰ Mohr remarks that, by removing the immunity for women seeking abortions that had existed since the country's founding (and before), legislators were making two "tacit assumptions": that abortion was no longer just a recourse for the desperate (who would not be deterred by the illegality), and that the practice of abortion was a widespread phenomenon in New York. Other states followed suit in the next five

years, including Virginia, New Hampshire, Michigan, California, Wisconsin, Vermont, and New Jersey. In 1847, Massachusetts passed a second law, making it illegal to advertise abortion services. The law also forbade advertisements to *prevent* pregnancy (which included abortions prior to quickening). Mohr argues that this latter part demonstrates that there was a concern not only with abortion itself but also with falling birth rates.³¹ Like New York's penalization of women, this new law was an attempt to not only punish those who were involved with abortions but to eliminate the market. Mohr comments that Vermont, specifically, seems to have passed its laws based on the "sensational publicity of the period," although it should be noted that the majority of new abortion laws were directed by a focus on medical regulation rather than the reactions of the general public.³²

Abortion as Medicine

One of Mohr's central claims in *Abortion in America* is that abortion policy from its beginnings in the United States has been bound up with medical policy and medical history.³³ Abortion laws were, and continued to be, framed as medical regulations. In the mid-nineteenth century, abortion was embroiled in a conflict between "regular" physicians with high-level degree and an interest in scientific medicine, and "irregular" physicians—folk healers, herbalists, and charlatans who made up the vast majority of doctors, especially in rural areas. A massive influx of irregulars into the medical field between 1820 and 1850 produced heavy financial competition for regulars, who turned to state legislatures for increased regulations in the field.³⁴ This was highly influential on

abortion laws because, unlike the majority of Americans at the time, regular physicians were, as a whole, opposed to abortion.

Mohr gives four interconnected reasons for their opposition: ideological, scientific, moral, and practical.³⁵ Ideologically, regular physicians abided by the Hippocratic Oath, which most irregulars did not. The formulation of the Hippocratic Oath used at that time banned abortion. Mohr notes that Hippocrates was unusual in his day for forbidding abortion—many other Greeks, including Aristotle, accepted it—but since it was part of the oath, regular physicians stood by the ban. Scientifically, regular physicians reasoned that it didn't make sense for quickening to be the benchmark for life or to give it preference over any other stage of fetal development, so that without a sure way to know when the conceptus became a person, it was better to forgo abortion altogether. Morally, doctors defended the value of life as a moral absolute (more so, Mohr notes, than most clergy members). Practically, abortions were frequently performed by irregulars and so were a competitive disadvantage for regular physicians. Regulars were losing patients to irregulars, and banning (or limiting) abortion was one way of solving that.

Kristin Luker adds that the true effect of the regulars' anti-abortion campaign was not to eliminate abortion but rather to put it entirely in the control of physicians. Physicians created a paradox in which they claimed that the conceptus had a right to human life yet were also largely comfortable with ending that life, so long as it was on their terms. In Luker's terms, physicians simultaneously defended both an *absolute* right to life and a *conditional* right to life for the conceptus.³⁶ Under the first, abortion is always murder. Under the second, the conceptus could be aborted only when a physician

decided that abortion was necessary. Luker argues that this paradox was necessary for doctors to maintain control of abortions. In order to defend leaving abortion decisions in the hands of trained physicians and elevating the prestige of physicians in turn, abortion needed to be considered a “sacred” matter of life or death for the conceptus; thus, the absolute right. But allowing physicians that domain over abortion necessitated the existence of the conditional right. Legal loopholes that allowed abortion for “therapeutic reasons” or to “save the life of the mother” meant that physicians had a great deal of discretion in determining whether or not to perform abortions.³⁷ “Life” could be used in the physical sense of preventing the woman’s death, or it could mean the “social, emotional, and intellectual” life of the woman. Doctors could justify performing abortions on the grounds of “neurasthenia” (a general diagnosis used for women who were considered to be high-strung) or deny them for any reason whatsoever.³⁸

Nativism and Race

The rise in abortion rates also triggered nativist sentiments of the time. White nativists, many of whom were physicians, were disturbed by the decline in birth rates among white, Anglo-Saxon Protestant women and the high birth rates of immigrants, especially those from Catholic countries.³⁹ In an 1866 address to the American Medical Association, Horatio Storer, one of the most prominent anti-abortion activists of the 19th century, gave the common line that abortion was much less common among Catholic women than among Protestants. Although he, like many others, was alarmed that this

demographic shift “strikes a blow at the very foundation of society itself,” he did allow that the dislike of both Catholics and abortions presents a paradox. Quoting one of his earlier works, Storer commends the “Romish ordinance” for saving “thousands of infant lives.”⁴⁰ Storer was not the only, or the most extreme, physician who opposed abortion on nativist grounds. Citing a number of publications from the mid-19th century, Mohr concludes that “There can be little doubt that Protestants' fears about not keeping up with the reproductive rates of Catholic immigrants played a greater role in the drive for anti-abortion laws in nineteenth-century America than Catholic opposition to abortion did.”⁴¹

It is equally important to consider the “white Anglo-Saxon” aspect of “White Anglo-Saxon Protestants.” Sociologists Nicola Beisel and Tamara Kay argue that a primary part of 19th-century abortion restrictions was a “racial project” designed to protect the demographics of Anglo-Saxons in the midst of massive immigration and the death tolls of the Civil War.⁴² As Beisel and Kay note, Anglo-Saxon women’s fertility was considered to be a resource in this struggle and as such, could be squandered or misused, as in the case of abortions.⁴³ At this point, Anglo-Saxon was considered its own race, distinct from many of the ethnic groups that we now band together under the label of “white” (which means something different today than it did as a social and political category in the 19th century).⁴⁴ As such, Beisel and Kay propose that the nativist sympathies that bolstered abortion restrictions should perhaps be considered in terms of their racial implications. Since the protection of the Anglo-Saxon race was often talked about in terms of “civilization” or “society” (this is reflected in the Storer quote above), it must be made clear that “civilization” as it was discussed in the 19th century was intractable from racial politics. Beisel and Kay note that “civilization” and its various

stages referred explicitly to a taxonomy of races and the supposedly corresponding human development.⁴⁵ Mohr mentions in an endnote that there are very few records of the black women who obtained abortions, even after the end of slavery:

In my search I uncovered only a few [references to black Americans] of any substance: the already cited reference to the use of cottonroot among slave women, a complaint from a black in 1869 that his people had "learned from New England" how to abort as frequently as whites, and the assertion by an Arkansas physician that "negro wenches of the South" commonly tried to abort by jumping from a high place to hard ground.⁴⁶

It makes sense that there would be little written on specific cases of abortion among slaves, although there is generalized knowledge, such as the prevalence of certain herbs used to induce abortion. After the end of slavery, the nativist and racially-focused narratives mentioned above shed light on the lack of attention received by black women seeking abortions.

Protecting Lives

This first wave of state legislation on abortion only targeted abortion providers, not the women themselves, and always manifested inside larger criminal code revisions, never alone. According to Mohr, this suggests that the restrictions had little to do with abortion itself and were mostly preemptive malpractice indictments, aimed at protecting women from quack doctors. He argues that this reflects the prevailing idea of the era, that abortion was a marginal practice, "usually resorted to by women who deserved pity and protection rather than criminal liability."⁴⁷ Although Mohr acknowledges the challenges of ascertaining the accuracy of this historical interpretation, he also notes that prominent authorities on abortion, such as physician John Beck, wrote of the desperation of young women seeking abortions as late as 1835.⁴⁸ In his 1817 dissertation, Beck discusses the

commonality of abortion among the ancient Romans and categorizes it as a form of infanticide, defining the latter as “the destruction of the Foetus in Utero, or of the child after it is born.”⁴⁹ Beck suggests two kinds of abortion that may occur “associated with crime and disgrace”: those resorted to by unmarried women who want to avoid public shame and those committed by married women who have had difficult and painful births previous to the abortion. In both cases, there is a clear acknowledgement of pain suffered by those women, although Beck does not condone abortion in any case. There is no discussion of abortion by married women who simply do not want more children.⁵⁰ As his dissertation is a thorough examination of the practice of infanticide (which for him, includes abortion), this suggests that the common understanding of the time, even among physicians, was that abortion was solely a recourse for the desperate.

Beck also addresses the discrepancies in scientific theory, ancient philosophy, and Catholic Church doctrine regarding the point at which a conceptus is “animated,” the moment when it becomes alive. He dismisses each of these, including the Quickening Doctrine, arguing that any attempt to distinguish between animate and inanimate conceptuses has the effect of increasing abortions. He appeals to a kind of disjunctive syllogism in order to reject this distinction:

The foetus, previous to the time of quickening, must be either dead or alive. Now, that it is not the former, is most evident from neither putrefaction nor decomposition taking place, which would be the inevitable consequences of an extinction of the vital principle. To say that the connection with the mother prevents this, is wholly untenable. Facts are opposed to it. Foetuses do actually die in the uterus before quickening, and then all the signs of death are present. The embryo, therefore, before that crisis, must be in a state different from that of death, and this can be no other than life.”⁵¹

Beck uses this argument to conclude that the only reasonable doctrine is one that “admits the embryo to possess vitality from the very moment of conception.”⁵²

Beck may be the earliest example of a prominent American author making the argument that life begins at conception. Although Mohr cites John Burns’ 1809 text, *Observations on Abortion* as an earlier example of the rejection of the Quickening Doctrine, Burns does not unequivocally state that life begins at conception; he does not even mention the Quickening Doctrine in his treatise. Rather, Burns briefly argues, using the analogy of newborns, that an embryo’s inability to act or think should not be justification for its death. He adds that “whoever prevents life from continuing, until it arrive at perfection, is certainly as culpable as if he had taken it away after that had been accomplished.”⁵³ This is an argument against some kind of abortion, but Burns gives us no reason to believe that he is not referencing the life-in-utero that was commonly acknowledged to exist after quickening. Given the prevalence of the Quickening Doctrine in 1809, it seems likely that if he were making an original argument for the immorality of abortion prior to quickening, it would be clearly articulated as such.

Choice and Free Choice

Whether or not Beck was the absolute first American physician to publish on life-at-conception, the prominence of his thesis on infanticide makes him a pivotal figure in the origins of the American pro-life movement. He also gives us crucial insight as to the role that “choice” played in 19th-century discussions of abortion. While the “pro-choice” movement did not exist until the late 20th century, a relationship between abortion and women’s choices was both present and complex. As evidenced by Beck’s

characterization of the women who sought abortions and the bountiful historical evidence of the popularity of that idea in the early 19th century (see below) the relatively lax approach to abortion, even post-quickening abortions, had much to do with an understanding that those “desperate” women had *no choice*, or at least, very limited choices. This becomes crucial in the later campaign against abortion, when lawmakers, physicians, and social commentators opposed the increased rate of abortion in wealthy, married women who seemingly *did* have other choices. Unlike the later pro-choice movement, which argues that women ought to have a plentitude of choices for their own reproductive autonomy, including abortion, the rhetoric of women’s “choice” in the 19th century was often used in arguments to restrict access to abortion. When middle-class and upper-class white, Protestant women (often mothers) began to seek abortions in large numbers, it was often used as a means of family planning that was more reliable than the contraception of the time. This contrasted with beliefs (nativist, religious, and otherwise) that demanded that (certain) women fully utilize their reproductive capacities. Storer’s research claimed that abortion was not divided across class lines, but it appears that more middle and upper-class women obtained abortions than lower-class women during the mid-century, which likely had to do with the heavy expenses associated with the procedure.⁵⁴ Madame Restell priced abortions based on what the patients could afford, but many doctors did not, and abortion became an extremely profitable business for those who offered it. The surge of abortion pricing was primarily limited to the beginning of commercialization, and the standard price of abortion had leveled out by the early 1870s, making it once again accessible to poor women.⁵⁵

Prior to 1840, abortion was seen as a “recourse of the desperate.”⁵⁶ After 1840, it became commonly acknowledged that many married, native-born, middle or upper-middle class, Protestant white women were seeking to terminate pregnancies. The public generally excused abortion for the very young and for “victims of seduction,” but had less empathy for married women, who, according to one article in an 1854 medical journal, “have no apology for concealment, and who only desire to rid themselves of the prospective cares of maternity.”⁵⁷ In the mid-century, a new wave of handbooks attempted to dissuade married women (and sometimes their husbands) from ending their pregnancies. Many physicians denounced abortion by married women, characterizing family planning as a “widespread determination... to avoid the labor of caring for and rearing children” (as spoken by one doctor from Michigan).⁵⁸ Mohr notes that one significant element in women’s use of abortion and men’s distaste for it was the amount of control it granted to women. Citing cultural anthropologists, Mohr suggests that one possible reason for the increasingly common role of abortion in family limitation was its ability to, unlike other contraceptive practices of the time, be used without men’s knowledge.⁵⁹ Whether or not this was the goal of women at the time, the idea carried some popularity with physicians, who blamed the changing roles of women and new desires for “voting and lawmaking” for their supposed neglect of traditional motherhood.⁶⁰ Mohr also cites other contemporary scholars who have argued that women’s increasing autonomy in the 19th century contributed to practices in limiting family sizes, a phenomenon referred to by some scholars as “domestic feminism.”⁶¹ Abortion and family planning were certainly associated with movements for women’s

rights, even though many early feminists, including advocates for contraception, opposed abortion.⁶²

This association between abortion and greater choices and freedoms for women was not universally accepted. Both feminist and anti-feminist writers placed much of the blame on husbands for coercing their wives into procedures which they did not want. Elizabeth Cady Stanton blamed the phenomenon of abortion on the “degradation of women,” and while few feminists blamed the women themselves, they largely believed that the solution to family limitation should come from men controlling their sexual urges, letting women choose when to become pregnant.⁶³ Rather than legalizing abortion, they argued for better education and the vote for women with the idea that improved circumstances would eliminate the need for abortion. One rallying cry was, “liberty or death,” with the implication that the liberation of women was what was needed to *end* abortion—that abortion was a side effect of women’s continued oppression in the home and in society.⁶⁴ However, Mohr argues that it is likely that most abortions were the result of couples acting together.⁶⁵ Both men and women had an interest in expressing sexual affections while avoiding the burden of additional children. Abortion was a way of reconciling this that was much more effective than contraceptive methods.⁶⁶

Anti-feminists also placed some blame on men for the upsurge in abortions. Storer, who had earlier attacked the character of women seeking abortions and who was certainly not a feminist, later agreed with a woman who wrote that unhappy marriages lead to abortions. His 1868 text, “Is It I?: A Book for Every Man,” intended to encourage men to not pressure their wives into sex, something he cites as a cause of abortions. Although Storer’s assessment of women’s fragility and lack of sexual appetite would

today most likely be labeled “benevolent sexism,” his book reflects a sincere desire to instill better behavior in men and boys from a young age:

Before [traditional family values can be restored], men must have a higher respect for women. They must be taught in childhood that the female mind is far oftener stainless than that of the male, and that, saving only those exceptional cases... the vice, really such, has been engendered, fostered, developed in woman by man.⁶⁷

The social character of women seeking abortions was still a matter of some tension for those opposing legalization. Wealthier, married, white women aborting their children was more alarming than the traditional image of the destitute and unwed mother. Professor Hugh L. Hodge warned his medical students in 1839 that abortion was becoming more common; not only were there the desperate women still seeking to end illegitimate pregnancies, but they were joined by "women whose moral character is, in other respects, without reproach; mothers who are devoted, with an ardent and self-denying affection, to the children who already constitute[d] their family [to be] perfectly indifferent respecting the foetus in the utero."⁶⁸ The situation described by Hodge presents a mother making a choice not to expand her family, and though he does not elaborate on this hypothetical, it is not immediately apparent that the mother is impoverished or otherwise placed in a desperate situation. Her choice seems much closer to what we might call a “free choice,” not limited by obvious material or psychological constraints. Although the archetypal “desperate woman” also often had a choice (between abortion, giving birth in a home for unwed mothers, or perhaps resorting to infanticide), that choice was much more constrained, such that it was (and is) easy for many people to claim that that person had no choice at all. What was far more alarming to the anti-abortion activists of the 19th century is the idea that women without those constraints

would make a free choice to end their pregnancies. This was paralleled in the early 20th-century fight against access to birth control and it is also reflected in the 21st century, when many individuals who identify as pro-life accept abortion in cases of rape or incest.

Medicalization's Role in "Choice"

The medicalization of abortion also had severe ideological impacts for women choosing their reproductive futures. Once physicians had established in the public and legal consciousness that decisions about abortion could only be determined by medical expertise, clergy, politicians, and women seeking abortions were no longer qualified to give any input on the morality or practicality of abortion. Luker notes that for women, this was compounded by physicians' claim that a conceptus was a complete human life. With two human lives in question and their rights pitted against one another, "women were defined as self-interested parties whose vested interests in the outcome made them incapable of reaching an 'objective' decision."⁶⁹ Women were divested of their role in the decision-making process precisely because they would be affected by the outcome of the choice made by the physician. The turn towards abortion as a medical procedure whose necessity was determined by experts also drastically shifted public opinion on abortion. When, prior to the involvement of the American Medical Association (AMA), most people either had some sympathies towards women who sought abortions or were altogether apathetic, the medicalization of abortion gave doctors "unquestioned legitimacy in the area of abortion," an idea which, Luker observes, is still prevalent

today.⁷⁰ Those who oppose abortion in all cases except those that would “save the life of the mother” (and most Americans who oppose abortion do support this exception) functionally leave decisions about abortion entirely in the hands of the doctors who determine what is medically necessary and what is not. Among those who support unfettered or less-restricted abortion access, a common slogan is, “abortion should be between a woman and her doctor.” But, as Luker points out, both supporters and opponents of legalized abortion should be more concerned about a return of complete “medical hegemony.” This is the ultimate instantiation of “pro-choice” (albeit, not the “pro-choice” that is used among abortion rights advocates today) wherein decisions about abortion are completely removed from the state and left in the control of individual physicians and their self-made governing bodies. It is important to draw attention to the deployment of the concept of “choice” during the 19th century, even if the word itself was not frequently used (or at least, any more frequently than its synonyms) in the writings of the time. “Choice” was not a buzzword associated with abortion, but the significance of the change in abortion demographics from women coded as desperate to women who had other options reveals that ideas about women’s choices and the choices provided to physicians were very relevant to discussions of abortion in the 19th century.

Conclusion

The 19th century saw significant transformation in the legal and medical treatment of abortion, as well as the beginnings of several important concepts that have informed abortion discourse ever since. In addition to the nation-wide criminalization of abortion at the state level, the passage of the laws like the Comstock Act (to be covered more extensively in Chapter Three) began a trend of legislation meant to make abortion access

more difficult without banning it altogether, the vestiges of which are found in forced-ultrasound laws (i.e., in some states, women must view or hear a description of an ultrasound before their abortion), mandatory waiting periods, and other abortion clinic regulation laws today. The mid-19th century shift in political and medical thought that categorized abortion as a medical procedure, subject to the discretion of physicians, was an important factor in *Roe v. Wade* and now persists in contemporary pro-choice rhetoric. Chapter Three engages with the varying movements for and against abortion and birth control, their factions and their coalitions, during the century in which abortion was illegal.

Notes to Chapter II

¹ Luker, 14.

² Luker, 15.

³ James C. Mohr, *Abortion in America: The Origins and Evolution of National Policy, 1800-1900*, New York: Oxford University Press, 1978. 25.

⁴ Aristotle, *History of Animals: Books VII-X*. Ed: D.M. Balme. London: Loeb Classical Library, 1991. 435.

⁵ Mohr, 6.

⁶ Mohr, 6.

⁷ Janet Farrell Brodie, *Contraception and Abortion in Nineteenth-Century America*. Ithaca: Cornell University Press, 1997. 144.

⁸ Mohr, 17.

⁹ Mohr, 18.

¹⁰ Brodie, 229.

¹¹ Mohr, 123.

¹² Mohr, 50.

¹³ Mohr, 50.

¹⁴ Mohr, 55-8.

¹⁵ Brodie, 226.

¹⁶ Mohr, 66-68.

¹⁷ Mohr, 67.

¹⁸ Mohr, 69.

¹⁹ Mohr, 74.

²⁰ Quoted in Mohr, 76.

²¹ Mohr, 79.

²² Mohr, 82.

²³ Mohr, 22.

²⁴ Mohr, 24.

²⁵ Mohr, 39.

²⁶ Mohr, 119.

²⁷ Mohr, 121.

²⁸ Mohr, 122.

²⁹ Mohr, 125.

³⁰ Mohr, 128.

³¹ Mohr, 130.

³² Mohr, 130.

³³ Mohr, 30.

³⁴ Mohr, 34.

³⁵ Mohr, 34-35.

³⁶ Luker, 32.

³⁷ Luker, 34.

³⁸ Luker, 34.

³⁹ Mohr, 167.

⁴⁰ Excerpt from Horatio Storer, *Why Not? A Book for Every Woman*, 1868. Published in *Abortion: A Documentary Reference Guide* by Melody Rose. Westport, CT: Greenwood Press. 2018. p. 12.

⁴¹ Mohr, 166.

⁴² Nicola Beisel and Tamara Kay. "Abortion, Race, and Gender in Nineteenth Century America." *American Sociological Review*, Aug. 2004, 69(4): 499.

⁴³ Beisel and Kay, 504.

⁴⁴ Beisel and Kay, 501.

⁴⁵ Beisel and Kay, 502.

⁴⁶ Mohr, 286.

⁴⁷ Mohr, 44.

⁴⁸ Mohr, 44.

⁴⁹ John Beck, "An Inaugural Dissertation on Infanticide," 1817. p. 28. Located at <<https://archive.org/details/2543010R.nlm.nih.gov/page/n3> >

⁵⁰ Beck, 35.

⁵¹ Beck, 31-32.

⁵² Beck, 34.

⁵³ John Burns, *Observations on Abortion*, 1809. p. 73. Located at <<https://archive.org/details/2544077R.nlm.nih.gov/page/n3> >

⁵⁴ Mohr 93.

⁵⁵ Mohr, 97.

⁵⁶ Mohr, 86.

⁵⁷ Mohr, 88.

⁵⁸ Mohr, 89.

⁵⁹ Mohr, 103.

⁶⁰ Mohr, 105.

⁶¹ Mohr, 103.

⁶² Reagan, 36.

⁶³ Mohr, 112.

⁶⁴ Mohr, 107.

⁶⁵ Mohr, 114.

⁶⁶ Mohr, 117.

⁶⁷ Horatio Storer, *Is It I?: A Book for Every Man*. Boston: Lee and Shepard, 1868. 140.
Located at
<<https://babel.hathitrust.org/cgi/pt?id=uc2.ark:/13960/t7zk5fm13;view=1up;seq=158>>

⁶⁸ Cited in Mohr, 87.

⁶⁹ Luker, 44.

⁷⁰ Luker, 44.

CHAPTER III: THE ABORTION FACTIONS OF THE EARLY 20th CENTURY

The first half of the 19th century saw abortion relatively unregulated prior to quickening and rarely prosecuted even after quickening. The second half of the century was marked by serious social and political changes that led to new abortion restrictions. Increased enforcement of existing laws, which involved a change in the attitude of physicians and lawmakers, was reflected in and bolstered by adjacent regulations such as the Comstock Act of 1873. This attitude of ‘Comstockery,’ as it was called, persisted through the first part of the 20th century. But, the burgeoning Birth Control movement in the 1920s paved the way for changes in popular discussion of abortion and legal reform in the second half of the 20th century.

The most significant social change between 1873 and 1973 was the shift from public disengagement with the topic of abortion to widespread popular interest in its legal and moral status. This is not to suggest that there was no interest in abortion outside the medical and legal professions at the end of the 19th century, but that interest was most often limited to what we might now call special interest groups—feminist organizations, nativist groups, and others. By the mid-20th century, “population control” interests and women’s liberation groups had brought the topic of abortion out into the open.

The Era of Comstockery

Although the AMA’s anti-abortion campaign started in the late 1850s, the abortion business continued to thrive for at least a decade. It was not until the later part of the 19th century that the campaign (and other, related, efforts) had effectively pushed abortion

underground. Mohr identifies a number of factors that led to the change in public perception of abortion by the end of the century:

The character of home medical guides and handbooks of the period, the reaction of homoeopathic physicians, the responses of the popular press, the fascinating relationships among medical doctors, the abortion issue, and the churches, and the rise of what became known as Comstockery all reflected to varying extents the effectiveness of the regulars' [formally trained physicians] all-out campaign against abortion in America. Taken together, they represent a significant, perceptible hardening of American public opinion against what had become a relatively common private practice.¹

This change in “public opinion” did not result in massive right-to-life protests, as in the 1980s, but rather a general shift in intolerance and ambivalence toward abortion that allowed physicians and politicians to increasingly regulate and restrict abortion without fear of a public backlash. This tactic of incremental regulation was highly successful. Janet Farrell Brodie writes that there was “little public outcry” against the new wave of anti-abortion and anti-obscenity laws, and “almost no groups or individuals organized to oppose [their] passage.”²

One of the most influential laws of the 19th century, the Comstock Act of 1873, ushered in an era of crackdowns on “obscenity,” a term that covered nearly any material that was sexual in nature. The Comstock Act outlawed the dissemination by mail of a wide range of “obscene” material, from pornography to information on sexual positions, but it was especially interested in preventing the spread of information on contraception and abortion. Mohr identifies the Comstock Act as likely being “the closest the federal government ever came to entering the anti-abortion crusade.”³ Although the most broadly applicable portion of the act mainly regulated distribution by the USPS, another section, governing only the District of Columbia and U.S. territories, was particularly extreme, forbidding any kind of distribution of obscene materials (including information on

contraception and abortion) and allowing their possession only for personal use.⁴ It was followed by a number of similar laws on the state level, which often added to range of punishable acts. The initial federal law, though only banning distribution via the U.S. Postal Service, was highly successful at dampening knowledge of abortion and birth control methods as well as prosecuting a number of abortion providers. Anthony Comstock extensively lobbied for the passage of the federal legislation, and following its enactment, became one of the most dogged investigators of its violations as an inspector for the U.S. Postal Service. His personal records, referenced by Mohr, show that he and his associates “aided in the indictment of 55 persons” identified as abortionists between 1872 and 1880.⁵ One individual who stands out among them is Sarah Blakeslee Chase, a homeopathic physician who was arrested by Comstock five times between 1878 and 1900.⁶ Unlike other providers of abortion and contraception who largely moved in secret by the end of the century, Janet Farrell Brodie comments that Chase was open about her beliefs that control over their reproductive lives was essential for women’s health and “the nation’s well-being.”⁷ She was also openly a eugenicist, who argued that those with hereditary diseases should not reproduce. Her most recommended method of contraception was the douching syringe, which she sold in addition to giving lectures on its proper usage. Of her five arrests, the only one that led to conviction was following the death of a pregnant patient in 1893, after which she served six years in prison. Following her release, she continued to sell syringes and advocate for birth control and was arrested and acquitted a fifth and final time in 1900.⁸

Although Comstock himself had little impact on Chase’s activities, most of his targets experienced much greater consequences. The majority of the individuals selling

and promoting birth control in the 1870s were young entrepreneurs who were not especially successful financially and who were vulnerable to the intense pressures of a Comstock investigation.⁹ But even the famous and wealthy Madame Restell, discussed in Chapter Two, was eventually undone by Comstock's probes. Although she was arrested and released several times prior to the passage of the Comstock Act, she was arrested for a final time in 1878 on charges of violating anti-obscenity laws when Anthony Comstock was able to procure abortifacient substances from her. She committed suicide the day before her trial, and Mohr speculates that, in addition to the massive national attention sparked by her death, the act itself may have symbolized a "turning point in public opinion" on abortion.¹⁰ Restell's suicide signaled that the era of U.S. law turning a blind eye to the public discussion and advertisement of abortion was at an end.

Kristin Luker calls the period between the passage of the Comstock Act and the decision of *Roe v. Wade* the "century of silence." Although public discussion of abortion and contraception would begin to grow in the mid-20th century, the 1870s-1930s were a time in American history where "the social climate [was defined] by the Comstock law," meaning that "fertility control was a private, not a public, practice."¹¹ In addition to the Comstock laws forbidding distribution of information on abortion, by 1880, there were also laws in most states forbidding abortion itself except in cases that would save the life of the mother. By 1900, every state had an anti-abortion statute of some kind.^d What counted as therapeutic abortion was very much up to the discretion of the physicians themselves, enshrining doctors' control over abortion access into law. Luker attributes this move towards defining abortion as a purely medical question as one of the leading

^d Mohr, 229. The exception to this was Kentucky, whose abortion ban came by way of their courts instead of legislation.

causes of the “removal of the abortion decision from public scrutiny.”¹² It is a recurring theme in every chapter of this dissertation that the positioning of abortion as “between a woman and her doctor” has had profound impacts on public perception of the procedure. In the late 19th century, the medicalization of abortion had the impact of effectively removing it from public life.

Religious Presence

One of the most prominent sites of blending between private and public in the contemporary abortion debate is religion. Religious views are a deeply personal matter for many, especially Evangelical Christians, whose religion focuses on the individual’s relationship with God, unmediated by a massive governing organization, such as that of the Roman Catholic Church. At the same time, religion plays an enormous role in contemporary public discourse on abortion, even (and perhaps especially) among those who see religion as a private and personal undertaking. The perhaps-paradoxical role of Evangelical Christianity will be explored in depth in Chapters Four and Five, but it is notable that, despite its prominence in our own time, religion played a fairly small part in abortion discourse and politics of the 19th and early 20th centuries. Knowing that laws alone were not enough to change public attitude on an issue like abortion, regulars recognized that “the intelligent moral sense of the people” would have to be changed before true cultural change could take place.¹³ To this end, physicians of the 19th century attempted to rally clergy and religious spokesmen on behalf of the anti-abortion crusade but found them to be generally unresponsive, especially prior to the 1860s. During the abortion boom of the 1830s and 1840s, secular newspapers covered the sensational

aspects of abortion-related deaths and arrests, but Mohr notes that American religious publications hardly ever touched the topic of abortion, though some did carry advertisements for abortifacients.¹⁴ Mohr attributes this silence on the issue to a number of possible causes, including the desire to avoid any sexually adjacent topic or the (possible feigned) assumption that Christian families would never be involved in abortion. However, the lack of attention from Protestant publications is almost certainly related to the Protestant clergy's unwillingness to publicly condemn the practice. Mohr speculates that the Protestant clergy of the antebellum United States may have avoided the topic out of an implicit acceptance of the Quickening Doctrine (which would mean that, however "unnatural" they may be, most abortions could not be equated with murder) and a desire to let churchgoers decide their own beliefs on what was, to them, a far-from-straightforward moral issue. Anti-abortion physicians were angry and bitter that the country's authoritative voices on morality had not joined them on what was a decidedly morality driven campaign, and their contempt for clergy was a recurring theme in physicians' anti-abortion speeches and publications through the 1860s¹⁵

It was only in the late 1860s that some Protestant spokesmen began to publicly condemn abortion. Congregationalist Reverend John Todd, who Mohr comments, was "perhaps the most popular moralizer by midcentury," was among the first Protestant preachers to speak out against the practice, referring to it as "fashionable murder" in an 1867 journal article.¹⁶ Todd had close connections with Horatio Storer, and Mohr hypothesizes that the latter may have recruited Todd to his anti-abortion cause. The Congregational Church in Maine, inspired by the decreasing numbers of native-born children in Maine schools, echoed Todd's condemnation, agreeing that "fashion" was to

blame for the “evil, more demoralizing and destructive, than either intemperance, slavery, or war itself.”¹⁷ The report spoke favorably of the regular physicians’ crusade against abortion, as did a subsequent report by the Congregationalists in Connecticut, the latter of which was also propelled by an investigation into declining native-born birthrates.¹⁸ After the Congregationalists broke the Protestant silence on abortion, clergy of other denominations shortly followed suit. The “Old School” branch of Presbyterians—the church experienced a schism in 1837, which was resolved in 1870—passed a resolution condemning abortion at its 1869 national assembly.¹⁹ While no other Protestant denominations officially condemned abortion at a state or national level, some prominent clergy such as Episcopal bishop Arthur Cleveland Coxe wrote opinion columns, penned pastoral letters, and gave public addresses on the subject.²⁰

Still, it was not common practice for Protestant officials to openly condemn abortion. In a campaign to remedy this continued silence from the pulpit, an 1871 AMA national committee urged their state and local affiliate groups to “visit every clergyman within their respective districts” and persuade them to speak openly against abortion.²¹ However, this campaign was not successful in recruiting new Protestant governing bodies or well-known clergymen to the cause, which only increased physicians’ resentment of Protestant inaction. Mohr cites a plethora of articles and reports, written by regulars and bitterly denouncing Protestant clergy.²² The overwhelming failure of the 1860s campaign to galvanize Protestant officials offers some evidence that the changes in attitudes toward abortion heading into the tail end of the 19th century had little to do with the influence of organized religion.²³

Although it represented less than 10% of the U.S. population, Catholicism was the only mainstream 19th-century religion that had any clear, vested interest in stopping abortion, prior to the Civil War.²⁴ Catholic canon law forbade abortion but made distinctions between “animate” and “inanimate” embryo (conforming to the Quickening Doctrine) since the Decretals of Pope Gregory IX in 1234 and perhaps before.²⁵ Luker comments that, unlike physicians of other religious backgrounds, Catholic doctors were well aware of their church’s moral stance on abortion, as were ordinary Catholics who, as discussed in Chapter Two, received abortions at far lower rates than Protestants. A few American bishops had also begun to speak out against abortion, even to save the life of the mother, as early as the 1840s. In 1869, Pope Pius IX revised the canon law on abortion, making excommunication the penalty for procuring an abortion, regardless of the stage of the pregnancy or the health of the mother.²⁶ However, Mohr notes that the publications of Catholic dioceses in the United States “remained completely silent” on the Pope’s proclamation.²⁷ At this point, the Vatican became much more vocal on abortion, making a number of proclamations on the nuances of acceptable and unacceptable action. In 1884, the Congregation of the Inquisition—the body within the administration of the Catholic Church, which was at that time responsible for the promulgation and clarification of Church teachings— held that it was impermissible to crush the skull of a fetus in order to end a dangerous or unresolvable event of obstructed labor (the process is called a “fetal craniotomy”). In 1889, the Congregation of the Inquisition forbade any operation that would kill a conceptus; in 1902, they forbade surgeries to remove an ectopic pregnancy. Popes gave addresses on abortion in 1930, 1944, 1948, and 1951 (and many times since).²⁸

Since 1869, the Catholic Church has been consistent and clear in its teaching that any abortion, including those for therapeutic reasons, leads to automatic (*latae sententiae*) excommunication.^e Despite this, Catholic groups outside of the Church administration did not begin organizing against abortion in earnest until the mid-20th century.

While there was a stark difference in the rates of Catholic versus Protestant women seeking abortions in the mid-19th century, by some accounts, those numbers seem to have evened out by the early 20th century. Reagan cites a comprehensive study conducted by Regine K. Stix between 1931 and 1932, in the Bronx. Of almost one thousand women who visited the local birth control clinic, the percentage of women who had obtained at least one illegal abortion was 35% among Catholics, Protestants, and Jewish women alike.²⁹ However, religious affiliations still reflected differences in reproductive patterns, with Catholic and Jewish women more likely to have children earlier in life and then seek abortions later. Protestant women more often aborted unwanted pregnancies prior to having their first child.³⁰ One possible interpretation of this pattern is that Catholic and Jewish women were more likely to use abortion as a means of protecting the children they already had from the financial difficulties that would come from adding another family member, while Protestant women used abortion as a means of preemptive family planning. This may also have ties to class discrepancies between poorer Catholic immigrants and oftentimes (though certainly not always) more financially stable Protestant families. Margaret Sanger references this distinction in her autobiography, *My Fight for Birth Control*:

^e Certain exceptions apply for all *latae sententiae* excommunications; e.g. if the person was forced into the action, if the person is under the age of 16, if the person was unaware of the forbidden nature of the action. (“The Subject Liable to Penal Sanctions, *Code of Canon Law*, Vatican. Cann. 1321-1330.)

Sometimes [the poor women] talked among themselves bitterly. “It’s the rich that know the tricks,” they’d say, “while we have all the kids.” Then, if the women were Roman Catholics, they talked about “Yankee tricks,” and asked me if I knew what the Protestants did to keep their families down. When I said that I didn’t believe the rich know much more than they did I was laughed at and suspected of holding back information for money.³¹

Although these conversations took place in the context of seeking contraception, not abortion, Sanger’s account underscores the correlation between class differences and religion that may have played a part in organizing for increased access to reliable methods of family planning.

Intersections of Motive in Public Attitudes

So far, two motives have emerged as the most prominent spurs for the anti-abortion shift in public opinion: nativism and what we might call a “sanctity of life” argument. With the exception of the Catholic Church, which had a relatively limited following in 19th-century America, physicians were the primary developers and defenders of the case for the sanctity of life. As Mohr describes, they had a strong moral imperative to value life based on their chosen profession, and their skepticism of the Quickening Doctrine led to a line of argument that extended that moral imperative to the conceptus.³² At the same time, most regular physicians in the late 19th-century were “white, native-born Protestants of British and Northern European stock” who both held and perpetuated many of the nativist fears prevalent at the time.³³ It makes sense that the rhetoric of nativism and the defense of life would overlap in the AMA’s campaign, especially with prominent nativists such as Storer leading the charge. Mohr notes that many physicians, especially Storer, were also staunchly opposed to the increasing liberalization of women’s roles in society, and limiting abortions was an important part of an attempt to limit women’s social

freedoms.³⁴ However, it does not seem likely that this was an equally impactful cause of anti-abortion sentiment among the general population, partly because physicians were, as Mohr notes, far more conservative on the issue of women's social roles than the average American. Additionally, many of the prominent anti-abortion activists at the turn of the century were suffragists and early feminists, such as Susan B. Anthony and Elizabeth Cady Stanton.³⁵ Anti-feminist beliefs certainly played some role in the crusade against abortion, but so too did high-profile feminist arguments (which I will return to later in this chapter).

Physicians' arguments for the sanctity of life caught traction with the public, especially since many of the early abortion laws and the sensationalized news articles focused on the deaths of the women themselves. It was also common for physicians writing on the topic to use "infanticide" interchangeably with "abortion," which accustomed the public to an association between the two.³⁶ With the decline of the popularity of the Quickening Doctrine, Americans were more open to the idea that the ending of a pregnancy at any stage might be the ending of a human life. To reiterate, this shift in public attitude should not be interpreted as a mass outcry against abortion; rather, the ambiguities and sentiments raised by the successful anti-abortion campaigns inspired a moral uncertainty that made the public more comfortable with ceding control of abortion access to the medical industry.

Nativist ideas, such as the panic over the declining birthrates of native-born white Anglo-Saxon Protestant women, often crossed paths with the sanctity of life argument, and the rhetoric of each was used by anti-abortion campaigners to bolster the efficacy of the other. This is perhaps most explicit in the Congregationalist Church positions

mentioned above. Although the anti-abortion stance in both Maine and Connecticut churches was unambiguous in its goal of reducing demographic changes, the actual language of the report issued by the Maine Conference focused on the horrors of “pre-infanticide” and relied on the language of protecting life: “In no one year of the late war have so many lost life in camp or battle, as have failed of life by reason of this horrid home crime.”³⁷ Luker gives an extensive list of nativism-minded anti-abortion publications from the 19th century and notes that both physician and non-physician activists stoked fears of changing ethnic demographics, with the latter more often employing provocative phrases such as “race suicide” in lieu of a more scientifically-oriented approach.³⁸ Tensions between nativist and sanctity of life sentiments were also clear in physicians’ very begrudging admiration of Catholic efforts to combat abortion. Storer was openly opposed to Catholics, especially since many were recent immigrants whose birth rates threatened native-born white demographic hegemony. Yet, he still published an anti-abortion letter from the Catholic Bishop of Boston and praised the content and its author.³⁹ Conflict and cooperation between nativism and the desire to protect all unborn life continued well into the 20th century, especially as the eugenics movement gained more ground near the turn of the century. While their primary point of overlap in the 19th century was the regulation of abortion, scientific advances in contraception in the early 20th century changed some aspects of that relationship.

Early Feminist Reactions

During the reign of the Quickening Doctrine, the distinction that would later emerge between contraception and abortion was not quite so clear-cut. Since a pre-quickened

pregnancy was not a pregnancy in the eyes of the common law, an early-term abortion was considered to be the prevention of a pregnancy, if it was discussed in those terms at all (I myself find endless enjoyment in the advertisements of products designed to “restore menstruation.”) However, once the Quickening Doctrine had fallen out of favor, methods of preventing conception were more often distinguished from methods of ending a pregnancy at any stage, especially among groups that favored the former over the latter. Early feminists were interested in contraception as a way to promote women’s social and economic freedom by giving them the ability to limit their families without resorting to abortion, which was opposed by the majority of feminist leaders who spoke on the matter. However, as women sought the vote, legalized contraception and abortion was not the prevailing feminist issue of the time. Mohr claims that “most feminists in the 19th century avoided the issue altogether,” and Brodie corroborates that this trend of dismissing issues of reproductive control was still at play in the early 20th century.⁴⁰ In describing Sanger’s journey of fighting for access to contraception, Brodie says that the feminists Sanger met with in hopes of collaboration “expressed shock at the idea of a public campaign for family limitation” arguing that the energy of the movement should be directed entirely toward women’s suffrage.⁴¹

Still, the feminists who did speak on abortion generally considered it to be a horrible side effect from men’s bad behavior. If men could learn to respect their wives, abortion would no longer be a necessary evil. In the 1850s, Henry C. Wright published a number of letters, written by women who had reluctantly had abortions due to their husbands’ adamancy in engaging in intercourse.⁴² The overwhelming sentiment in these letters was that although they felt they had no choice but to end the pregnancy, it was

often emotionally torturous; these women felt driven to it as they had no way to prevent getting pregnant when their husbands rejected abstinence. Although calling these instances “spousal rape” would be somewhat of an anachronism, it is clear from the letters published that what we would now call spousal rape was a prevalent problem, and the feminists of the time worked to dissuade these “selfishly sensual” husbands from forcing their wives into pregnancy after pregnancy, many of which led to unwanted abortions. Elizabeth Cady Stanton, one of the leaders of what we would call the “first wave” of feminism, claimed that abortion was a result of the “degradation of women.”⁴³ Since some contemporary journalists and historians (perhaps most notably, Lynn Sherr and Ann D. Gordon in a 2015 piece for *Time Magazine*) have denied that Cady Stanton took a public stand on the issue—or indeed, opposed abortion at all—I believe some brief investigations into her writing (and that of Susan B. Anthony) would offer clarity on a historical topic that is still critically important to many people in the contemporary abortion debate.⁴⁴

The particular article Mohr cites was published on the front page of *The Revolution*, a women’s weekly owned by Anthony and edited by Cady Stanton and Parker Pillsbury.⁴⁵ It was a direct response to an article from “The Tribune” (presumably *The New-York Tribune*, but Cady Stanton does not specify). In the quoted article, the author rails against the crime of “child murder,” which can happen “either before or after birth” and prostitution, for which the author provides statistics within New York City. In response, Cady Stanton, writing as “E.C.S.,” claims that women have long warned of the “thick coming dangers” of prostitution and infanticide and states the following: “We ask our editors who pen those startling statistics to give us *their* views of the remedy. We

believe the cause of all these abuses lies in the degradation of women.” This seems fairly unambiguous—Cady Stanton considered abortion a harm, along with postpartum infanticide and prostitution—but saw it as an almost inevitable effect of the men’s mistreatment of women. The rest of her article supports this interpretation.

Susan B. Anthony’s views on abortion are slightly more difficult to secure; this is a task that both pro- and anti-abortion groups have been struggling over for decades. The argument that Anthony openly opposed abortion has three primary pieces of evidence that are most often cited by members of the contemporary pro-life movement who wish to use her as an icon: an opinion piece published in *the Revolution* entitled “Marriage and Maternity,” an 1875 speech on “Social Purity,” and *The Revolution’s* refusal to publish advertisements for abortifacients, even though those ads were common among the paper’s contemporaries.⁴⁶ The last is the most substantial indication that Anthony, the proprietor of the paper, opposed abortion. On the front page of *The Revolution’s* first issue in January 1868, it lists the advocacy positions of the paper, in a column signed by Anthony, Cady Stanton, and Pillsbury.⁴⁷ *The Revolution* “will indulge in no Gross Personalities and insert no Quack or Immoral Advertisements, so common even in Religious Newspapers.” Given the well-established connection between “quack doctors” and abortion, as well as the frequent complaints of physicians against the common practice of religious newspapers publishing advertisements for abortion services, this passage very much signals that the paper, at the very least, did not wish to support abortion, and perhaps associated it with “immoral” acts and “Gross Personalities.” In the March 26 issue of that year, co-editor Parker Pillsbury published a piece, “Quack Medicines,” in which he condemns newspapers’ publication of quack advertisements and

claims that “child murder, both before and after birth, is a regular and, terrible to tell, a vastly extensive business.”⁴⁸ Pillsbury clearly opposed abortion and considered it murder. It would not be entirely fair to project that same belief on to his co-editor and the newspaper proprietor, but it gives some weak evidence that *The Revolution* was opposed to the practice of abortion. Combined with the stronger evidence of the original editorial statement on “Quack and Immoral Advertisements,” it does not seem such a stretch to say that Anthony’s newspaper, co-edited by Cady Stanton, had an anti-abortion slant.

Far less credible in establishing Anthony’s position on abortion is the July 1869 article, “Marriage and Maternity.” The commonly quoted segments of that article, which was signed by an “A,” unequivocally denounce abortion and those who seek it:

Much as I deplore the horrible crime of child-murder, earnestly as I desire its suppression, I cannot believe... that such a law would have the desired effect. It would only be mowing off the top of the noxious weed, while the root remains. We want prevention, not merely punishment. We must reach the root of the evil, and destroy it...

Guilty? Yes, no matter what the motive, love of ease, or a desire to save from suffering the unborn innocent, the woman is awfully guilty who commits the deed.⁴⁹

However, there are two substantial problems with using this article as an indication of Anthony blaming women for their abortions. The first is that the use of this quote (reproduced on the websites of Feminists for Life, Americans United for Life, and other prominent contemporary pro-life organizations) rarely takes into account the rest of the article, which largely blames men for the prevalence of abortion, and includes such lines as, “if man takes her individuality he must also take her responsibility [for abortions]. Let him suffer.” This does not negate Anthony’s distaste for abortion; however, offering up that first quote as an example of Anthony casting the blame on women is certainly removing it from necessary context. The other problem with the frequent citation of this

article is that it was very probably not written by Anthony at all. As Sherr and Gordon note (Gordon is an experienced historian of Anthony and Cady Stanton), Anthony did not often write articles for *The Revolution*, and when she did, she signed them as “S.B.A.”, the same signature she used in her correspondences.⁵⁰ There is no record of her ever using “A” as a signature, and thus, little to no reason to believe that Anthony was the author of that article. Nonetheless, individuals and organizations ranging from Priests for Life to the BBC have asserted, without criticism, that Susan B. Anthony considered abortion to be “child-murder,” a term pulled from this piece.⁵¹

The 1875 speech, “Social Purity,” was an indictment of the liquor and “licentiousness” that Anthony perceived to be degrading the whole of society. Far more famous for her advocacy in the temperance movement than for any position on abortion, Anthony used the speech to elaborate on the impacts that men’s prevalent liquor use had on women and the irresponsibility of male leaders who refused to address the problems of liquor:

The prosecutions on our courts [sic] for breach of promise, divorce, adultery, bigamy, seduction, rape; the newspaper reports every day of every year of scandals and outrages, of wife murders and paramour shooting, of abortions and infanticides, are perpetual reminders of men’s incapacity to cope successfully with this monster evil of society.⁵²

The “monster evil” is intemperance, and the crimes and tragedies Anthony lists are its consequences. This is in line with Cady Stanton’s statement that abortion is the result of another evil, the degradation of women. Both of these early feminists appear to oppose abortion— and perhaps even consider it murder, although that much cannot be said with any kind of certainty— but primarily regard it as one negative consequence of one or more much larger social ills.

Although we can safely conclude that both Cady Stanton and Anthony disliked abortion but saw it as primarily a symptom of other social issues, their positions are a point of interest in this dissertation largely because they are so important to contemporary groups involved in the abortion debate, especially pro-life groups. Feminists For Life mention Susan B. Anthony in the official description of their organization, and draw their brand of feminism largely from the first-wave feminists that they claim as ideological predecessors.⁵³ Considering that the mission of Feminists for Life is to end abortion by rooting out underlying social causes that contribute to it, it seems fair for them to align themselves with Anthony. However, other groups, such as the political action committee, Susan B. Anthony List, which is primarily focused on placing legal restrictions on abortion, use the first-wave feminists, especially Cady Stanton and Anthony, as a symbol that has taken on its own sort of identity—positioning one kind of feminism against another—with little regard for the historical accuracy of the real, human activists who became that symbol. Certainly there were other first-wave feminists who agreed with the new laws against abortion; no movement, especially one of that size, is monolithic in its ideology. But the common contemporary references to “first-wave feminists” as such, deployed in order to underscore beliefs about abortion that are not representative of the goals or ideas of that movement, is a particularly insidious rhetorical strategy, used (albeit less frequently) by pro-choice groups as well as pro-life groups.

Birth Control and Eugenics

Although the suffragists that Margaret Sanger met with were uninterested in making contraception a centerpiece of the feminist movement, Brodie describes the

influence that pre-World War I Greenwich Village had on her ideas about sexual politics. Inspired by Emma Goldman, Havelock Ellis, and Sigmund Freud, Sanger embraced many of the radical and avant-garde ideas of the Village, including the advocacy of sexual liberation.⁵⁴ It was this idea in particular, as well as her experiences as an obstetric nurse, which led to her interest in accessible contraception. Her experiences with poor and immigrant women and their frequent desperation for reliable means of family limitations prompted her to leave nursing and search in earnest for information on contraception. Due to the restrictions of the Comstock laws, publications on contraception were outlawed, so Sanger traveled to Europe. Brodie reports that she returned in 1915 with a bag full of contraceptive diaphragms and a “fierce determination to disperse her information and her products” in spite of the risks posed by Comstock laws.⁵⁵ Though Sanger did face legal challenges and arrests in the following decades, Brodie claims that one of the major barriers to her success in promoting contraception came from the “widespread cultural ambivalence” as well as the internal conflicts within individuals regarding reproductive control, “which had permitted passage of the Comstock laws in the first place.”⁵⁶ This “cultural ambivalence,” similar to the uncertainty that had allowed the passage of anti-abortion laws in the previous century, helped keep contraception a private matter, debated within families.

Retrospectively, there can be little doubt that the gradual spread of contraceptive information into the public sphere paved the way for public discussions of abortion. However, many advocates of contraception, including Sanger, made efforts to distinguish between birth control and abortion and often openly opposed the latter. The relationship between abortion and birth control remained fraught for much of the 20th century.

Reagan writes that the birth control movement “generated its own abortion discourse,” differentiating two methods of reproductive control that were synonymous in the eyes of much of the public and repeatedly asserting that contraception was morally acceptable while abortion was not.⁵⁷ While the birth control movement’s steps towards promoting women’s access to sex for the sake of pleasure and giving moral legitimacy to (some kinds of) reproductive control eventually served as a gateway for the acceptance of other forms of family limitation, that dialogue created a binary that reinforced negative beliefs about abortion. However, given the newness of that binary, many people, both for and against abortion, were slow to accept it. Reagan explains that despite constant insistence by “birth controllers” in publications and in conversations with clients that abortion and birth control were different, women still came to birth control clinics hoping to get an abortion.⁵⁸ She goes on to say that,

many women...quite logically thought that “birth control” and “family limitation” included preventing birth through abortion. The popular tradition of women did not make a distinction between contraception and abortion, but saw them as part of the same project— a way to avoid unwanted childbearing.⁵⁹

In 1927, birth control clinics in Chicago turned away 201 patients—16 percent of their clientele—because they were already pregnant.⁶⁰ Although sympathetic to the plights of those women, the (often well-off) leaders of the birth control movement insisted that abortions could be avoided through the use of contraception. Given that most forms of contraception at the time relied on the participation of the male sexual partner, and many of those partners were unwilling to participate in birth control, women, especially poor women, still sought abortions.⁶¹ This demonstrates one of a number of tensions between the birth control movement and the working-class and impoverished women that often sought their services.

Another point of conflict was the frequent use of birth control as a form of eugenics. While Linda Gordon notes that eugenicists in the early 20th century were often antagonistic to birth control on the grounds that it could inhibit “positive eugenics” (the encouragement of reproduction in desirable populations) and it was not as efficient as sterilization in enacting “negative eugenics” (the prohibition of reproduction in undesirable populations), there were some eugenicists who saw birth control as a natural ally.⁶² To a far greater degree than eugenicists supported birth control, birth controllers supported eugenics. Gordon argues that the elitism present in the feminist movements of the time gave feminist birth control advocates common ground with eugenicists of the time: the women’s rights movement was already largely anti-Catholic, committed to stereotypes of immigrants and the working-class as “drunken undesirables.” Gordon explains that, “birth control reformers were not attracted to eugenics because they were racists; rather, they had interests in common with eugenicists and had no strong tradition of antiracism on which to base a critique of eugenics.”⁶³ Sanger, who was the face of the movement, believed in the values of birth control to transform racial demography, and as time progressed, her interest in eugenics overpowered many of her original motivations for providing accessible contraception.^{64,f} The strong association between birth control clinics and eugenicists helped the expansion of both. Eugenicist academics wrote articles promoting free speech—which for birth controllers, meant freedom from the constraints

^f Although Sanger was undoubtedly a eugenicist, there is one quote frequently misattributed to her, even by well-regarded historians such as Gordon (on p. 196 of *The Moral Property of Women*): “More children from the fit, less from the unfit—that is the chief issue of birth control.” Gordon cites this quote as [Margaret Sanger, “Why Not Birth Control In America?” *BCR*, May 1919, pp. 10-11]. In fact, the quote appears on the very next page of that issue of *Birth Control Review*, in an editorial penned by “American Medicine.” Angela Davis also possibly misattributes the quote, though her wording is more ambiguous. Davis claims that Sanger “published” the article (*Women, Race, and Class*, p. 213-214), which could be a part-truth since Sanger was the editor-in-chief of *Birth Control Review*. However, Davis’ language seems to imply that Sanger wrote the words herself. At the very least, the ambiguity is misleading.

of the Comstock laws. Eugenist lawyers offered legal defense work for birth controllers prosecuted under those laws.⁶⁵ Gordon writes that as birth control became more normalized and the word “eugenics” became associated with Nazism, birth control clinics disengaged with the language of eugenics, but continued the eugenists’ work.⁶⁶

Eugenic motivations for family limitation continued beyond the birth control movement, although eugenic ideas often took on the euphemistic name of “population control.” Where birth control clinics could only persuade “undesirable” patients to limit their family size, hospital abortions often removed patients’ choices by force. Reagan notes that when low-income women sought legal, therapeutic abortions, they were often coerced into sterilizations. Not all post-abortion sterilizations were coerced, but low-income “ward” patients who obtained therapeutic abortions were sterilized more than twice as often as patients who paid privately.⁶⁷ Many of these were women of color, especially black women, and the coerced sterilizations reflected political proposals for forced sterilizations which were “based in racist stereotypes and designed to be punitive.”⁶⁸ At the same time, other women who wished to obtain sterilizations were refused. Reagan attributes this to the “fundamental medical assumption” that reproductive decisions should be made by the physician, which rejected the desires and needs of the patient herself. Those physician-controlled decisions reflected the views of the doctors themselves, many of whom had adopted the “population control” position that poor women and women of color had “too many” children and should be prevented from additional reproduction while affluent white women “should not be permitted to avoid childbearing.”⁶⁹ In addition to paralleling the eugenic beliefs prevalent in the earlier birth control movement, this viewpoint is incredibly similar to the nativism that spurred many

of the original abortion restrictions in the United States. Although the original nativist position focused primarily on forcing white, Protestant women into childbearing in order to “compete” with lower-income immigrant families, the sterilization procedures of the mid-20th century took a double-sided approach to the same goal: forcing white women into giving birth while actively restricting the ability of “less desirable” populations to increase the size of their families.

The Politicization of Reproductive Control

From its beginning, the movement for family limitation was engaged in radical politics. The birth control movement had emerged from the avant-garde political scene of New York City, and the socialist movement of the early 20th century was an ally in the advocacy of reproductive control for the working class. When Sanger joined the Socialist Party in 1912, she wrote for their newspaper and recruited working women to the cause.⁷⁰ Angela Davis argues that, once Sanger “severed her ties” with the Socialist Party, “she and her followers become more susceptible than ever before to the anti-Black and anti-immigrant propaganda of the times.”^{71,g} American Socialism advocated for better conditions and more control in the hands of workers, and the ability to limit family size meant more financial freedom for workers. Reagan explains that many supporters of birth control considered it to be a revolutionary tool, better allowing poor families to rise out of poverty. In the bigger picture, it meant that the working class could “[refuse] to produce wage workers and soldiers” for the ruling elite. Compounding gender and class concerns, some argued that contraception could free women from compulsory motherhood and

^g “Severing ties” may simply mean decreased engagement with the Party. I can find no evidence that Sanger ever officially dissolved her Socialist Party affiliation.

allow them to enjoy sex for pleasure.⁷² These ties to socialism did not go unnoticed by politicians and anti-abortion advocates. From the inception of anti-abortion laws in the 19th century until the 1940s, physicians had a great amount of discretion over what constituted a legal “therapeutic abortion.”

Starting in the 1940s, hospitals began to institute abortion committees to determine whether the abortion request was merited, taking the decision out of the hands of individual doctors.⁷³ Reagan describes the increased monitoring of therapeutic abortion as, in part, a manifestation of McCarthyism.⁷⁴ A particularly influential 1944 article by physicians Samuel A. Cosgrove and Patricia A. Carter connected calls for abortion law reform to Russia’s “amoral and unethical” society and used red-baiting and inflammatory language to enmesh therapeutic abortions within Cold War sentiments.⁷⁵ At the same time, Gordon writes, population control advocates were using the threat of communism to persuade people of the need for global programs to limit fertility. The idea was that countries with large numbers of people in poverty were a breeding ground for revolution; by the mid-1960s, the United States required many countries to institute population control programs as a condition of receiving nonmilitary foreign aid.⁷⁶ Population control also gained popularity as an environmentalist ideology aimed at protecting the earth from the destruction brought by massive populations. Encouraged by these ideas, Senator Robert Packwood of Oregon introduced a bill in 1970 that aimed to loosen restrictions on abortion as a solution to the perceived problem of overpopulation.⁷⁷

While population control programs— both foreign and domestic— preached reproductive limitation for the benefit of society, it did not include feminist ideas. The benefits brought by access to birth control (voluntary or forced) were to prevent “race

suicide,” communism, environmental destruction, and a host of other real or perceived social ills, but the ideology of population control was not interested in alleviating women’s oppression; in many cases, it was achieved by perpetuating that oppression. So, while birth control and abortion gained some public interest by appealing to the fears of overpopulation, its politicization as a feminist issue took a different trajectory. Underground abortion organizations helped women to gain some control within a system dedicated to controlling their reproduction. “Jane,” a Chicago abortion service, is perhaps the most famous of those groups; between 1969 and 1973, they provided somewhere between 11,000 and 12,000 abortions.⁷⁸ Reagan notes that what distinguished Jane from other illegal abortion operations was its “feminist and radical political orientation.” In addition to offering abortion services, Jane provided sexual education to women, teaching them about their own reproductive systems and offering free copies of the Boston Women’s Health Book Collective’s publication, *Our Bodies, Ourselves*.⁷⁹ Many of the Jane abortion providers were not physicians. Given doctors’ willingness to turn women over to the police, and given that the illegal nature of the abortion service made official licensing irrelevant, Jane members often preferred to learn how to perform abortions themselves.⁸⁰

The anti-Vietnam War protests and the Civil Rights Movement politically energized a large number of young people, many of whom were women. Reagan comments that the women in these protest movements began to examine their dissatisfaction with the way the politics of the Left treated gender, and, starting in 1967, “women’s liberation” groups began to appear in a number of cities. These decentralized groups focused on issues traditionally associated with the private sphere, such as gender

relationships, housework, and sexuality, and reoriented them as collective issues, the “personal as political.”⁸¹ Abortion access was not the only issue these groups advocated for, but it was part of a larger collection of political demands aimed at securing a more socially and politically liberated existence for women. Despite *Griswold v. Connecticut* legalizing access to contraceptives for married couples in 1965, birth control could be difficult to obtain, especially for unmarried women. Abortion was frequently used, and its restricted status not only meant material harms for women but, as Reagan notes, a symbolic rejection of women’s right to use sexuality for pleasure instead of reproduction.⁸² One of the most important tactics that women’s liberation groups used was the “speak-out,” where women would publicly share their experience of having an illegal abortion. Reagan writes that these speak-outs took abortion out of the private sphere and pulled it into the public, educating politicians, physicians, and the general public on the lived experiences of illegal abortion and stirring discussion in the political arena.

Conclusion

The accepted convention of the 19th century that abortion was a private matter was powerful enough to prevent Protestant clergy from speaking out against the practice, but it also meant there was little to no public opposition when anti-abortion laws and Comstockery challenged abortion’s legal existence. The groups that did speak publicly on abortion (mainly doctors) did so not as private individuals, but as professionals, bolstered

by national organizations. Even anti-abortion nativists hid behind the professional legitimacy of medical journals rather than speaking as individuals or non-professional interest groups. When physicians successfully medicalized abortion, giving themselves nearly complete discretion over its legal practice, they further emphasized the private nature of the event—it was an action taken between a woman and her doctor, even if the choice was often made merely between the doctor and himself. Early feminists were some of the first to declare abortion a matter of public interest, though that interest was couched inside larger issues of public concern and so treated as a symptom of poor social health rather than a subject to be addressed directly. Ultimately, it was the movement for birth control that provided an opening for public discussions of abortion, though that progression was paved with racism, classism, and eugenics. The social movements of the 1960s and the women’s liberation groups shaped by those movements transformed the personal issue of abortion into a nascent political landscape, soon to be filled with the public debate and political rhetoric that mark the beginning of the abortion issue as we know it today. In Chapter Four, I will show the transition of these disparate coalitions into single-issue movements and the development and reliance on a rhetoric of rights, forming the basis for the “pro-life” and “pro-choice” terms and movements of today.

Notes to Chapter III

¹ Mohr, 171-2.

² Brodie, 275.

³ Mohr, 197.

⁴ Brodie, 256.

⁵ Mohr, 97.

⁶ Brodie, 132.

⁷ Brodie, 131.

⁸ Brodie, 132.

⁹ Brodie, 234.

¹⁰ Mohr, 199.

¹¹ Luker, 52.

¹² Luker, 36.

¹³ This quote is from Homer Hitchcock, in an 1876 testimony to the Michigan State Board of Health (Mohr, 262).

¹⁴ Mohr, 183-4.

¹⁵ Mohr, 184.

¹⁶ Mohr, 187.

¹⁷ The Maine report is quoted in Mohr, 189.

¹⁸ Mohr, 189.

¹⁹ Mohr, 192.

²⁰ Mohr, 192-3.

²¹ Mohr, 193.

²² Mohr, 194.

²³ Mohr, 196.

²⁴ Mohr, 187.

²⁵ Luker, 59.

²⁶ Luker, 59.

²⁷ Mohr, 187.

²⁸ Luker, 59.

²⁹ Reagan, 23.

³⁰ Reagan, 137.

³¹ Margaret Sanger, *My Fight For Birth Control* (Fairview Park, Elmsford, N.Y.: Maxwell Reprint Co., Division of Maxwell Scientific International, 1931), 49.

³² Mohr, 35-6.

³³ Mohr, 166-7.

³⁴ Mohr, 168.

³⁵ Mohr, 111.

³⁶ ex. Beck, "An Inaugural Dissertation on Infanticide"

³⁷ Mohr, 188.

³⁸ Luker, 266.

³⁹ Mohr, 186.

⁴⁰ Mohr, 253.

⁴¹ Brodie, 288.

⁴² Mohr, 110.

⁴³ Mohr, 111. The citation from Stanton herself is: E[lizabeth] C[ady] S[anton], "Infanticide and Prostitution," *Revolution*, I, No. 5 (Feb. 5, 1868), 65.

⁴⁴ Lynn Sherr and Ann D. Gordon, "No, Susan B. Anthony and Elizabeth Cady Stanton Were Not Antiabortionists," *Time*, Nov. 10, 2015. <<http://time.com/4106547/susan-b-anthony-elizabeth-cady-stanton-abortion/>>

⁴⁵ The archived newspaper can be found at <<https://archive.org/details/revolution-1868-02-05>>

⁴⁶ Examples of articles which rely on this evidence:
<<https://www.washingtonpost.com/posteverything/wp/2017/01/18/susan-b-anthony->

would-never-have-joined-the-womens-march-on-washington/?utm_term=.6804554463c9>, <<http://time.com/4093214/suffragettes-abortion/>>,
<<https://aol.org/2018/02/15/susan-b-anthony-would-be-no-fan-of-todays-feminism/>>

⁴⁷ *The Revolution*, Jan. 8, 1868, 1. <<https://archive.org/details/revolution-1868-01-08>>

⁴⁸ Parker Pillsbury, “Quack Medicines,” *The Revolution*, Mar. 26, 1868, 178.
<<https://archive.org/details/revolution-1868-03-26/page/n1>>

⁴⁹ A., “Marriage and Maternity,” *The Revolution*, July 8, 1869, 4.
<<https://archive.org/details/revolution-1869-07-08/page/n3>>

⁵⁰ Sherr and Gordon

⁵¹ BBC: <<http://www.bbc.co.uk/ethics/abortion/mother/early.shtml>>
Priests For Life: <<http://www.priestsforlife.org/articles/femquotes.html>>

⁵² Susan B. Anthony, “Social Purity,” Mar. 14, 1875.
<http://www.pbs.org/stantonanthony/resources/index.html?body=social_purity.html>

⁵³ Feminists For Life, “Organizational Description.”
<<https://www.feministsforlife.org/our-mission-organization/>>

⁵⁴ Brodie, 290.

⁵⁵ Brodie, 291.

⁵⁶ Brodie, 291.

⁵⁷ Reagan, 36.

⁵⁸ Reagan, 36-7.

⁵⁹ Reagan, 41.

⁶⁰ Reagan, 36-7.

⁶¹ Reagan, 37-8.

⁶² Linda Gordon, *The Moral Property of Women: A History of Birth Control Politics in America*, Baltimore: University of Illinois Press, 2002, 194.

⁶³ Gordon, 196.

⁶⁴ Gordon, 196.

⁶⁵ Gordon, 198.

⁶⁶ Gordon, 202.

⁶⁷ Reagan, 207.

⁶⁸ Reagan, 207.

⁶⁹ Reagan, 208.

⁷⁰ Angela Y. Davis, *Women, Race & Class*, New York: Vintage Books, 1981, 211.

⁷¹ Davis, 213.

⁷² Reagan, 36.

⁷³ Reagan, 179.

⁷⁴ Reagan, 180.

⁷⁵ Reagan, 179-180.

⁷⁶ Gordon, 283-4.

⁷⁷ Reagan, 231.

⁷⁸ Reagan, 225.

⁷⁹ Reagan, 225-6.

⁸⁰ Reagan, 225.

⁸¹ Reagan, 228.

⁸² Reagan, 229.

CHAPTER IV: THE RHETORIC OF RIGHTS

The rise in youth activism and political engagement during the Civil Rights Movement and Vietnam War protests of the 1960s energized the women's liberation movement and their argument for legal abortion, as well as a new generation of anti-abortion activists. This transformed the conversation about abortion from one of desired outcomes to one of rights, which remains the prevalent discourse of contemporary abortion rhetoric. Two of the already-significant areas of clash, the role of (white) women and the sanctity of life before birth, remained a mainstay of the debate, but shifted in their language. The feminist ideas that women should be able to have greater reproductive freedom and more room to work outside the home had for many decades been labeled as "women's rights," but "reproductive rights" was not a common term or, as far as I can determine, a term used at all. The "right to privacy" also gained significant traction in the 1970s, especially after it was cited by the Supreme Court as a decision point in *Roe v. Wade*. Abortion had been spoken of as a necessity, a burden, and an inevitability, but it was not until the late 1960s that abortion advocates put it into a rights-based framework.¹ So also was the language reshaped among those who opposed abortion. As the American Medical Association began the liberalization of its abortion policies in 1967, young social justice-minded activists replaced physicians as the primary anti-abortion advocates. Informed by the language of anti-war protests and racial justice, this new crop of abortion opponents transformed the obligation-based ideology of "do not kill" that physicians derived from the Hippocratic Oath, to the language of civil rights. As rights-based language became more common in multiple spheres of social justice, both sides of the abortion debate migrated toward an ideological and rhetorical dependence on rights-based language, the

undertones of which have carried over into today's pro-choice and pro-life discourse. This chapter will grapple with the change in abortion rhetoric during the 1960s and 1970s and the sometimes-disparate movements that eventually coalesced into the dual camps of pro-choice and pro-life at the end of the 1970s.

The Arguments for Abortion

Chapter Three introduced the local consciousness-raising and speak-out groups that were the foundation of the women's liberation movement, as well as abortion provider and referral networks like Jane (the Chicago-based abortion collective) that added a feminist angle to what had previously been a movement sourced largely from "population control" ideology. In *The Pro-Choice Movement: Organization and Activism in the Abortion Movement*, sociologist Suzanne Staggenborg describes the intersection of women's liberation activists with the long-standing practice of secret referrals.² A particularly prominent voice at the junction of referrals and activism was Lawrence Lader, a writer and political activist, one of the founders of the National Association for the Repeal of Abortion Laws (NARAL) and a board member of the Association for the Study of Abortion (ASA). Lader's controversial book, *Abortion* (1966), reported on the large number of licensed physicians performing abortions in the United States, and in the aftermath of the book, he began using his knowledge of the system to give referrals to women seeking abortions.³ For Lader, abortion referrals were a political tactic, meant to mobilize grassroots activists and "stir as much controversy and debate as possible while bringing the facts to the public."⁴ Rather than relying on secrecy, Lader spoke publicly of

his many abortion referrals and announced at a press conference for his book that he would continue to refer women for abortions unless stopped by a district attorney.⁵

The single-issue abortion movements of the 1960s were not always in sync with the growing women's liberation movement. Abortion referral groups were sometimes explicitly feminist, but other times motivated by different social causes. Staggenborg identifies one such organization as the Clergy Consultation Service on Abortion (CCS), which started in New York in 1967 but ultimately became a nationwide operation involving thousands of ministers and rabbis. While non-Catholic clergy had largely stayed out of abortion politics through the 19th century and the first half of the 20th century, the Civil Rights Movement had motivated many liberal Protestant and Jewish denominations and individual clergy toward social activism. Some denominations became active in abortion politics as an entire religion; the Episcopalians, the United Church of Christ, the United Methodist Church, and the United Presbyterian Church all voted to publicly support abortion as a right.⁶ The United Methodist Church went a step further, distributing packets in 1972 supporting abortion law repeal.⁷ Although individual clergy certainly held their own beliefs one way or another on the women's movement, CCS and related clergy referral groups were not explicitly aligned with women's liberation groups. The movement for referrals, and eventually reform and repeal, was its own entity, which only sometimes intersected with feminist groups. This separation is notable in the development of ASA, which in its beginning was primarily composed of physicians, attorneys, and similar professionals. When it was founded in 1964, ASA was the only organization devoted singularly to abortion. Its creator, Dr. Alan Guttmacher—recognizable for his contemporary namesake, the Guttmacher Institute (a reproductive

health policy organization)—saw the role of ASA as primarily a research and educational association.⁸ Although it supported the reform of abortion laws, it did not initially support full repeal. However, its professional pedigree went a long way in giving much-needed “prestige and authority” to the abortion movement. Guttmacher was also President of Planned Parenthood at the time, which officially stayed out of the conversation on abortion for most of the 1960s. Although Planned Parenthood did endorse abortion law repeal in 1969, they were never active in providing organizational support prior to *Roe v. Wade*.⁹ In 1967, the AMA voted for reform (though not repeal) of abortion laws, and in 1968, the American College of Obstetricians and Gynecologists followed suit. That same year, the American Public Health Association became the first professional association to endorse repeal rather than reform.¹⁰ In 1970, New York, Alaska, and Hawaii decriminalized abortion, making them the first states to endorse repeal over more incremental legal reforms. Reagan writes that New York immediately became a hub for women all over the country who traveled to New York for a legal (and safe) abortion. Over 65% of the women receiving abortions in New York in those first years of legalization were from out of state.¹¹

Physicians and the Women’s Movement

Luker spends all but two pages of her chapter on abortion reform groups discussing the role of physicians and professional associations in advocating for reform and repeal. In one of the few instances where she mentions women’s groups, she claims that their decisions to support repeal were more often “made on tactical rather than ideological grounds... [they] wanted no laws at all on abortion but believed that total repeal was

politically unlikely.”¹² The male reformers, on the other hand, “supported in principle a mediated decision that took women’s interests into account along with a number of interests.”¹³ Luker very much paints a picture in which male and female reformers were neatly divided, with the former supporting reform and the latter (somewhat cynically) supporting repeal. While Luker provides other valuable insights into the abortion struggles of the last two centuries, this analysis is reductive and at times inaccurate, as highlighted by Lawrence Lader in a letter to the editor of the *New York Times Book Review* regarding their review of *Abortion and the Politics of Motherhood*:

Miss Luker should have studied more carefully the records of [NARAL] at the Schlesinger Library of Radcliffe College, and my papers as chairman of the association for its first six years at the New York Public Library. She would find that the first board of the association, a coalition of nationwide abortion rights groups formed in 1969, had only eight doctors among its 62 members. Only one could be considered from the medical "Establishment." The sole medical organization represented was the liberal Physicians Forum. The American Public Health Association (including all categories of health professionals) joined us in a year. Planned Parenthood's medical committee entered the abortion rights movement in 1969, after approval by the membership. The American Medical Association's House of Delegates voted to approve abortions in accredited hospitals with the consent of two consulting physicians only after the passage of New York State's landmark law in 1970.

For Miss Luker to credit the medical profession rather than women's organizations for playing a "central role" in abortion rights in the 1960's is fallacious. The first board of the National Association for Repeal of Abortion Laws had 34 women among its 62 members, representing grass-roots organizations in California, Massachusetts, Wisconsin, Illinois and other states. It was women (and men), not the medical profession, who produced years of campaigning to win the New York law, a political phenomenon of this century.

Miss Luker claims that "it took at least a decade for the moral dimensions of the debate to come to the fore." In reality, by 1966 the campaign for abortion as a moral right was already a fervent national issue. Major articles on this position appeared in *The New York Times Magazine* (1965), a book digest in *Reader's Digest* (1966). Our members appeared on hundreds of radio and TV shows nationwide, and picketed hospitals and legislative hearings. Above all, women stood up at public meetings to describe the horrors of their illegal abortions and demand the moral right of legality. The Clergy Consultation Service in 1967

joined others of us in referring women to selected doctors for abortion, openly testing the law and making the ultimate statement of moral right.

It was this mass movement of women from every social stratum that built the campaign in the 1960's, and Miss Luker should have checked the ample evidence in the record.¹⁴

Staggenborg's assessment of the different but determined tactics of the women's liberation movement working parallel to and then in conjunction with the medical "establishment" (including population control groups) is more compelling than Luker's assessment that it was physicians who did the majority of the work in building a movement for abortion reform and repeal or Lader's counterargument that it was primarily women's organizations. However, there is truth to Luker's claim that women's approach was "tactical," although this label can very much also be applied to the population control groups who had neo-Malthusian concerns or the physicians groups who were worried about their own ability to make in-the-moment determinations on therapeutic abortions. The "tactical" nature of the women's movement was derived from witnessing the suffering (both physical and economic) inflicted upon women who were forced to carry pregnancies to term and the deaths and maiming resulting from poorly executed illegal abortions.

Events in the Public Eye

While groups such as Jane made slow but substantial progress in educating the public, two widely publicized events brought huge amounts of national attention to the efforts for repeal and reform. The first of these was the case of Sherri Finkbine. Finkbine was a married mother of four who was expecting her fifth child in 1962, when reports

began to emerge about the severe fetal birth defects caused by the sleeping pill Thalidomide. Finkbine had been taking a high dosage of Thalidomide throughout her pregnancy and, concerned by reports from the media and advice from her own obstetrician, she decided to have a therapeutic abortion. She was booked for an abortion the following Monday morning and, though her doctor assured her it was merely a formality, wrote a letter to the hospital's three-member therapeutic abortion board describing her situation. Luker claims that, had things proceeded according to plan, Finkbine would have had the same therapeutic abortion accessed by thousands of women before her—one that was not technically legal since her life was not at risk, but was allowable nonetheless since her physician and the medical community deemed it to be a case sufficient to warrant an abortion.¹⁵ However, Finkbine wanted to spread the word to women who may not have heard of the effects of Thalidomide (though not FDA approved, military husbands were bringing it back from Europe for their wives), so the day before her abortion, she told her story to a friend who worked for the local newspaper. Though her name was not printed in the next day's story, her scheduled abortion was canceled hours before her appointment time. She quickly became a national figure, representing the debate, previously limited primarily to those in the medical community, between the interpretation of therapeutic abortion laws as being strictly to save a woman's biological life, versus their interpretation as saving aspects of her life, broadly construed. She traveled to Sweden to get the abortion in her fourth month of pregnancy, which had to be reviewed by a second panel there, but she had already become a figurehead for the national debate around therapeutic abortions. She received many letters of support, but she also lost her job and experienced enough death threats

against her and her children that the FBI was brought in to protect her. Though Finkbine never became an abortion activist, her case energized many others. Luker argues that the Finkbine case also made clear the sometimes obfuscated position of “middle-of-the-road” American physicians, who were largely in support of an abortion for a married mother with a damaged conceptus, sought early in the pregnancy, who planned to conceive again.¹⁶ These “broad constructionists” faced vocal opposition from “strict constructionists,” who believed that the letter of the law demanded that therapeutic abortions should only occur when the woman herself faced the risk of death. Related to this divergence in thought among physicians, Luker also attributes a much broader and significant effect to the Finkbine case:

*The fundamental disagreement about whether or not an embryo represented a “real” person or merely a potential person, a disagreement that had existed beneath the surface for at least a hundred years, was finally forced into the open by the Finkbine case.*¹⁷ [emphasis original]

Luker’s choice of words—that the disagreement over personhood of the conceptus had previously existed “beneath the surface”—is a significant one, given the attention that historians (including Luker herself) have paid to the dissolution of the Quickening Doctrine in the 19th century. Nonetheless, it is a credible assessment that, to some degree, that dissolution happened without public attention. Although it was broadly discussed in medical journals and among the community of physicians in the 19th century, this was never a topic of public discussion until the 1960s, and the Finkbine case undoubtedly played a large role in non-specialists taking up this legal and moral question. The Finkbine abortion also demonstrates a continuation of the role of eugenics in the discussion of abortion. The deformity of the conceptus (which was confirmed by the doctors who performed the abortion in Sweden) was the primary justification for

physicians' support for the therapeutic abortion, and "fetal anomalies" are a significant part of the discussion on late-term abortions today. While these discussions are far more nuanced than the eugenicist positions of the 1920s and often heavily factor the stressors placed on the parents who would raise the disabled child, the idea that abortions, which would otherwise face broad opposition are legitimized by the disability of a conceptus, should not be isolated from its roots in a centuries-old eugenics debate.

The second event to bring national attention to the dilemmas of abortion in the 1960s was an epidemic of rubella, also known as German measles, in California between 1964 and 1965. Although rubella is rarely life-threatening for adults, it often damages the conceptus if contracted by a pregnant woman in the first sixteen weeks of her pregnancy. Luker notes that the frequency and severity of such injuries is debated today, but "the classical obstetrics textbook" used during the mid-1960s gave a 30% probability of rubella causing birth defects, including "blindness, deafness, serious mental retardation, cardiac problems" and more.¹⁸ Since the effects of rubella on pregnancies had been studied since the early 1940s, it was already common for abortions to be performed if the woman had contracted rubella. Although the acceptability of abortions for rubella had been widely established at this point, the prominence of the Finkbine case made many physicians more aware of the pushback from the strict constructionists who opposed the Finkbine abortion. In turn, the physicians who performed abortions on women with rubella increasingly sought legal protection for abortion in such cases.¹⁹ Although Luker attributes the push for legal reform surrounding therapeutic abortions to medical professionals, Staggenborg emphasizes the role that the rubella epidemic had on public and media attention, although she agrees with Luker that both the rubella epidemic and

the Thalidomide crisis played an important part in forcing physicians to confront the divergent beliefs within the medical profession.²⁰

Women's Rights and Abortion Rights

Even with growing grassroots support, the women's movement was divided in its desire for affiliation with the abortion movement. The National Organization for Women (NOW) was founded in 1966 and endorsed abortion repeal the next year. However, Staggenborg notes that the decision to support abortion repeal was controversial within the fledgling organization. Since abortion was not yet considered to be an integral part of the women's movement, the older feminists and the "professional" women wanted to focus on economic parity and were worried that a strong stance on abortion would harm the organization's credibility.²¹ Even after they endorsed repeal, NOW's national organization initially had little participation in the movement to legalize abortion, partially because they still prioritized economic causes. As a result, the committees tackling abortion issues lacked the funds to connect with grassroots activists. However, some state and local affiliates were deeply connected to the fight for abortion, especially the New York chapter of NOW, which founded its own group, New Yorkers for Abortion Law Repeal.²² Other women's liberation organizations, such as the Chicago Women's Liberation Union (CWLU) which was affiliated with Jane, were much more invested in abortion repeal. The coordinated national effort between women's groups and abortion repeal organizations largely began with the National Conference on Abortion Laws, organized by Lader; Ruth Smith, the current president of ASA; and Lonny Myers, a physician with ties to the population control movement.²³ The organizers invited

women’s liberation groups, population control groups, abortion interest groups, religious organizations, and others who might have interest in the topic of abortion. Held in Chicago in 1969, the Conference led to the creation of NARAL (then an acronym for “National Association for Repeal of Abortion Laws”) to sustain long-term coalitions between these disparate groups. Staggenborg notes that although the single-issue abortion movement had originated largely independently from the women’s movement, NARAL was strongly influenced by the latter, and the heavy presence of feminists at the Conference encouraged NARAL’s immediately adoption of a “women’s rights” frame for the discussion of abortion as opposed to the more conservative framework of population control.²⁴ Despite representing a diverse set of ideologies, NARAL was not a large, centralized organization in its early years—the participating parties became affiliates of NARAL rather than chapters. Prior to *Roe v. Wade*, NARAL largely played a coordinating role between different groups rather than focusing on generating its own grass-roots support, as it would later on.²⁵

NARAL has maintained the same acronym since its inception in 1969, but it has changed its official name three times. NARAL’s progression of name changes provides a compelling parallel to the changes in abortion rhetoric since 1969 and is useful for tracking the moments of dissolution and emergence of certain terms and language within the movement. The first name change was in 1973, after the passage of *Roe v. Wade*. Given that repeal had been, in some senses, accomplished, it adopted a new name that focused on the protection of the access guaranteed by *Roe*. NARAL was now the National Abortion Rights Action League.^h This dovetails neatly with the rights-based

^h NARAL had an official timeline on its website, from which I am drawing the information on its organizational history. The timeline was removed from the website sometime in early 2017 and not

rhetoric of the 1970s through the 1990s. In 1993, NARAL slightly modified its name to become the “National Abortion and Reproductive Rights Action League.” The NARAL timeline elaborates that this alteration was intended “to more accurately reflect the organization’s comprehensive approach to reproductive health policy.” As of 2018, NARAL lists their primary issues as Abortion, Birth Control, Fighting Pregnancy Discrimination, and Paid Family Leave.²⁶ In 2003, the most substantial name change in the organization’s history occurred when “NARAL” ceased to be an acronym entirely. The organization was then (and is currently) named “NARAL Pro-Choice America.” A 2003 article from *The New York Times* sheds light on the strategy behind the change:

"Through our name change we are underscoring that our country is pro-choice," said Kate Michelman, president of the organization. "It is the right name for this moment in history."

David J. Garrow, a legal historian at Emory University who has studied the abortion debate, said the organization was using its new name to put a greater emphasis on choice as opposed to abortion. "It's a free way of getting 'pro-choice' into a news story, even if editors don't allow the words to be used in the reporter's voice," Professor Garrow said.²⁷

As one of the largest abortion access advocacy groups in the United States, these shifts in NARAL’s formal title should not be regarded as coincidental; they are directly indicative of the periods of change within the popular rhetoric of the movement and have likely been influential in changing the popularity of certain terms, as noted by Garrow in the *NYT* article. NARAL, then, provides us a guide for some of the most significant moments of rhetorical change leading to the contemporary reliance on “pro-choice.”

replaced. I have reached out to NARAL about their reasons for removing the history section of their website (email sent December 6, 2018). I have corroborated many of the events listed with other sources and, finding no reason to believe it is inaccurate, I will continue to use NARAL’s timeline, which is archived by an impartial third party at <https://web.archive.org/web/20170203194103/http://www.prochoiceamerica.org/assets/files/about-naral-history.pdf>.

The Right-To-Life Movement

Although she says little on the opposing movement, Staggenborg does offer that anti-abortion activists began to push back the late 1960s, creating the “right-to-life” campaign, which coalesced into a national movement with the founding of the National Right to Life Committee (NRLC) in 1971.²⁸ However, NRLC served a similar role to early NARAL, primarily providing support to the much more influential state groups that were its affiliates. After New York passed its liberal abortion law in 1970, opposition grew, and the right-to-life movement gained momentum. Although the illegality of abortion had been the norm for a century (and in the 1960s was still very much the norm), the right-to-life movement was in many ways distinct from those who were simply satisfied with the status quo. Like the abortion access movement, they recognized the problems with the policy of giving doctors nearly complete control over abortion decisions under the guise of “therapeutic abortions,” although their concern derived from the inconsistent application of human rights to the conceptus, something they believed to be a fundamental moral truth.

In *Defenders of the Unborn: The Pro-Life Movement Before Roe v. Wade*, historian Daniel K. Williams argues that popular histories of abortion routinely bypass nuanced discussion of the movement against abortion legalization or deny its existence altogether.²⁹ This, he says, is a problem for abortion scholarship since without an understanding of the roots of the right-to-life movement, it is difficult for researchers to fully explain why the pro-life movement is still so impactful today, long after many other socially conservative movements of the midcentury (such as the push for school prayer)

have faded in popularity. Williams attributes the lasting power of the right-to-life movement, which would eventually become the pro-life movement, to its early grounding in the ideas and rhetoric of human rights, a message that attracted a politically and religiously diverse group of supporters.³⁰ Drawing on the same language as the Civil Rights Movement, the women's liberation movement, the anti-war movement, and the movement for gay and lesbian rights, the right-to-life movement captured the spirit of "postwar American liberalism."³¹ Williams describes the original organizers of the right-to-life movement as being primarily "Catholic Democrats who were committed to New Deal liberalism" and principles such as the right to a living wage and the legal protection of workers, both of which were positions endorsed by Pope Pius XI.³²

In Williams' estimation, the right-to-life movement began in the 1930s in opposition to the efforts of some physicians to reform the strict abortion laws of the time. Although they were informed by historical Church teaching and papal decrees, the right-to-life organizers of the 1930s were also, in their eyes, defending absolute moral law and waging war on moral relativism and utilitarianism, which advocated for easier access to abortion in the name of public health.³³ Although they were not at the time using the language of human rights, the positioning of Catholic deontology against utilitarianism gave the early-20th-century debate a substantial philosophical ancestry, some pieces of which have been retained in the current debate. To show the utilitarian nature of the abortion reform advocates, Williams points to a physician, William J. Robinson, who was an outspoken supporter of legal first-trimester abortions in the 1920s and 1930s. Robinson wrote that abortion was "not a *nice* thing" and did entail "the destruction of a commencing life" but that it ought to be legalized in order to curb the deaths of women

who sought dangerous illegal abortions.³⁴ Robinson explicitly identified as a utilitarian, which makes him an easy subject for Williams' comparison. However, many of the pro-reform groups described in Chapter Three show similar patterns of thought. The eugenicists who favored abortion access did so on the grounds that it would help the greater good; the same is true of the later population control movement. Even protest signs featuring coat hangers (a very common symbol for advocating abortion legalization) convey a utilitarian argument with a single image: if we do not make safe abortion legal and accessible, then women will be injured or killed without significantly reducing the rate of abortions; therefore, we should make safe abortion legal and accessible. Luker, writing in 1984, agrees that those who identify as pro-choice "are, as their opponents claim, 'utilitarian.'...utilitarianism is consonant with many of the pro-choice side's vaguely protestant beliefs and, more to the point, with their value of rationality and its extensions: control, planning, and fairness."³⁵ Luker's note that abortion legalization is founded on beliefs in human control and planning helps to illuminate the root of the axiological differences, especially in regards to Williams' point that the proto-right-to-life movement was founded on the idea of upholding absolute moral law. While the boundaries of that moral law has shifted over time, this already frames the conversation in a way that should be approached with care and attentiveness. To properly debate a moral question in which one side relies on deontological claims and the other relies on utilitarianism, there must first be a metaethical debate on which approach better suits the moral dilemma. If the metaethics are bypassed—and they largely have been, in every iteration of the abortion debate—then the debate will not only be unresolvable but will lack the direct clash necessary to have a productive conversation,

and both sides will be confused as to why the other seems to be ignoring the substance of their arguments.

In the late 1960s, Williams writes that Catholic organizers made the choice to separate the issue of abortion from the issue of birth control, which was legalized for married couples in the 1965 *Griswold v. Connecticut* decision.³⁶ This allowed them to focus on issues of personhood and the individual rights of unborn persons, arguments that held no water in the rapidly disintegrating debate over birth control. It was this separation, easing the passage from “Catholic movement” to “human rights movement” that made the right-to-life arguments palatable to the Protestants and Jews who had previously dismissed arguments based explicitly in Catholic religious belief. The foundation of the argument was still rooted in absolute moral law, but rather than espousing the inherent value of human life and the sanctity of sexual relations in marriage, the right-to-life activists articulated their concerns in the language of “inalienable” human rights and constitutional rights, relying on the Declaration of Independence and an interpretation of the Fourteenth Amendment to give weight to the latter.³⁷ This also gave the movement bipartisan momentum. However, Williams notes that this rights-based liberal approach came into conflict with two other rights-based causes of the time: personal autonomy and gender equality. Around the same time that Catholics had transitioned their arguments to rights-based language, the movement for abortion law reform and repeal was moving away from their utilitarian arguments on public health and toward a rights-based discourse of their own.

The Effects of Roe

With its 1973 decision on *Roe v. Wade* and its companion case, *Doe v. Bolton*, the Supreme Court made abortion access a legal right up to the point of viability, considered to be the end of the second trimester of pregnancy.³⁸ The decision was drawn from Section 1 of the Fourteenth Amendment, the relevant part of which reads, “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”³⁹ The seven-justice majority, represented by Justice Blackmun, defended their decision specifically on the grounds of the Due Process Clause, writing that there was a “right of personal privacy” rooted in that clause.⁴⁰ The court also decided that a conceptus is not a person and is therefore not eligible for due process protection under the Fourteenth Amendment.⁴¹ Writing for the *Law and History Review*, Mary Ziegler describes the way that *Roe v. Wade* shifted the language of the abortion reform and repeal movement toward the rights-based narrative of the *Roe* and *Doe* decisions and in doing so, changed the coalitions supporting legalized abortion. Prior to *Roe v. Wade*, what Ziegler refers to as “policy-based arguments”—the public health concern for women getting illegal abortions and the arguments of the population control movement foremost among these—were a significant part of the broader case for abortion repeal.⁴²

Policy and Public Health

The population control arguments that sustained many of the early abortion reform and repeal groups were quickly phased out after *Roe v. Wade*, since the movement, which could now reasonably be called the “abortion rights” movement, had

now shifted its language to that of civil and constitutional rights. This was a move away from population control arguments that had historically alienated civil rights advocates, especially those in the black community. Rev. Jesse Jackson was especially vocal on this issue, arguing that legalized abortion was motivated by racism and would be used as a population control method targeted at reducing birth rates among black women. Comparing abortion to police brutality, Jackson wrote in the *Chicago Defender* that “we used to look for death from the man in the blue coat, and now it comes in a white coat.”⁴³ As discussed in Chapter Three, population control emerged in part from the eugenics movement, and its advocates were often vocally in favor of coerced or forced sterilization, a large percentage of which were done to women from marginalized groups. The racist history of population control needed to be expunged from the language of the abortion rights movement in order for that movement to align itself with civil rights causes, and the lessened need for the support of population control organizations allowed groups such as NARAL and Planned Parenthood to part ways with the population control advocates who had once been their close allies.

The argument for public health still very much plays a role in the rhetoric of today’s pro-choice movement, but it has never regained the popularity that it enjoyed prior to *Roe* and *Doe*. Ziegler quotes leaders of NARAL and Planned Parenthood, pre-*Roe*, commenting on the public health concerns of abortion repeal. One quote that stands out in particular is from a 1970 *New York Times* article penned by Harriet Pilpel, a Planned Parenthood and Association for the Study of Abortion attorney who authored Planned Parenthood’s *amicus curiae* briefs for *Roe*. Pilpel writes:

Those of us who did not grow up in a rigid religious tradition which decries all abortion (even to save the life of the mother) as murder, look at abortion *not*

primarily as a philosophical problem the answer to which must probe our fundamental beliefs about life with a capital L, *but as a social and health problem*. We face it in terms not of theoretical aspects of human existence but in terms of freedom of choice as to when and whether to have a child—*that freedom of choice* which in matters relating to marriage, family and sex is guaranteed to all Americans by the Constitution of the United States.⁴⁴ [emphases added]

Ziegler heavily compresses the quote, making it appear as though Pilpel is making an argument solely for public health concerns rather than rights, but the full quote, given above, makes it clear that, even before *Roe*, the two were often tied together.⁴⁵ Although this quote should not be taken to represent the views of the entire movement, it is telling of the effect that *Roe* had on the debate about rights. While Pilpel does not use the word “rights” here or elsewhere in her article, the statement that “freedom of choice... is guaranteed to all Americans by the Constitution” is very clearly invoking the idea that reproductive choice is a Constitutional right. At the same time, she also dismisses the notion of abortion as being a philosophical problem, which suggests that she does not consider the question of moral rights to have the same relevance as those of legal rights. She pins the “social and health problem” of abortion as the crux of the issue. She goes on to reference the vast number of illegal abortions performed by non-physicians and explains the discrimination and higher rate of death for non-white women. Although she touches on many of the ideas that would be later addressed in the language of human rights, the connecting factor between the policy-based “social and health” argument and the argument for a Constitutional right to choice (which could probably be considered a policy argument in its own right) is that Pilpel considers both of them to be linked to real-world dilemmas rather than “theoretical aspects of human existence” or, as she says, philosophy. The astute reader will notice that she in fact makes many assumptions about human existence and moral priorities; however, the critical takeaway from this piece is

the extent to which Pilpel attempts to align public health concerns with legal rights, all while adamantly distinguishing the two from moral rights.

Pilpel also avoids any mention of gender, other than in naming a statistic about female deaths. The rhetorical and organizational separation between abortion rights and women's rights was common at the time, but in the early 1970s, we begin to see the language of the women's rights argument for abortion (e.g. "choice" and bodily autonomy) used in conjunction with other arguments and, importantly, often stripped of any reference to gender. The language of autonomy and choice was also used to dispute abortion laws on the grounds that they restricted the decision-making power of the (primarily male) physicians. Reporting on a 1971 NARAL conference that determined a test case for challenging Michigan's abortion law, Eileen Shanahan of the *New York Times* paraphrases Joseph L. Nellis, one of the leaders of NARAL:

Mr. Nellis said that he thought courts would more easily strike down state anti-abortion laws if the test case were presented in terms of interference with the physician's practice of medicine than if it were done on the basis that many women's rights groups have advocated - namely, that anti-abortion laws represent an unconstitutional interference with the right of a woman to control her own body.⁴⁶

Betty Friedan, a founder of both NARAL and NOW, said in response that Nellis' approach seemed to imply "the right of a doctor to deprive a woman of the right to choose" and "we do not recognize that right."⁴⁷ As then-vice president of NARAL, Friedan likely meant "we" to be representative of the association. Nonetheless, NARAL's internal discord over which legal and rhetorical strategy was most beneficial was representative of the contention within the larger abortion rights movement. It also recalls the century-old medicalization of abortion, accomplished in order to put control over abortion in the hands of physicians. The implications of perpetuating this physician-

patient dynamic in order to gain support for abortion repeal will be more fully developed in Chapters Five and Six.

The Right to Privacy

Emphasizing the role of Constitutional rights in legalizing abortion, the *Roe* decision changed the way that many Americans understood the debate around abortion. Population control was already damaged by its racist history, but its lack of inclusion in the *Roe* decision was the proverbial nail in the coffin of its popularity in pro-legalization arguments. Public health arguments, however, were a decisive piece of the *Roe* decision, although they were subordinated to the rights-based arguments. Writing for the majority, Justice Blackmun affirmed that the state had interests both “in protecting the woman’s health and safety” as well as “in protecting fetal life.”⁴⁸ The due-process right to privacy under the Fourteenth Amendment was gender-neutral and broadly applied; it covered the rights of physicians to practice freely as well as “a woman’s decision whether or not to terminate her pregnancy.”⁴⁹ The practical result of this joint right was the stipulation that, although the states have the right to limit some abortion access in the second trimester, first trimester abortions are “left to the medical judgment of the pregnant woman’s attending physician.”⁵⁰ In addition, these rights, not being absolute in nature, must be weighed against the interests of the State:

On the basis of elements such as [the social, psychological, and medical harms of pregnancy], appellant and some *amici* argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses. With this we do not agree... The Court's decisions recognizing a right of privacy also acknowledge that... a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life.⁵¹

Perhaps surprisingly, this qualification of the rights bestowed in *Roe* was not well publicized or frequently discussed by either abortion rights groups *or* their opponents in the years following *Roe*. Ziegler notes that the massive letter-writing campaigns organized by right-to-life groups in 1974 primarily focused on the court's assessment of fetal (non)personhood and the legitimacy of the privacy rights given to women and their physicians.⁵² Abortion rights groups attached themselves to the affirmation of a woman's right to make decisions about her pregnancy. A NOW "debating handbook" issued to its activists in 1974 instructs them to compare the Constitutional right of a woman "to limit childbearing" to First Amendment rights such freedom of speech and freedom of religion. In particular, the handbook advised its recipients to avoid discussions of the morality of abortion, instead stressing the right of everyone to make their own moral decisions. Ziegler adds that it also instructed activists to avoid policy-based arguments.⁵³ Between 1974 and 1977, Karen DeCrow, a feminist attorney and the new president of NOW, insisted that the organization's national board commit more resources to finding "new language, slogans, [and] catchphrases" to maintain support and protect *Roe*. The "right to choose" became the overwhelming refrain in NOW's press conferences, public relations campaigns, and national conferences.⁵⁴

NARAL, still under Lader's leadership, was not so quick to dismiss policy rhetoric. At its February 1973 Executive Committee meeting, less than two weeks after the final *Roe* decision, the members agreed that "to emphasize 'a woman's right to choose abortion' is sometimes not a good strategy. It is important to stress the legal and public health benefits of abortion."⁵⁵ Along this vein, NARAL continued its affiliation with the group Zero Population Growth into 1974, when some of the membership began calling

for new strategies and new leadership, although they did concede a move towards rights-based rhetoric with the name change to the “National Abortion Rights Action League” in 1973. According to Ziegler, Sarah Weddington, one of the attorneys who argued the winning side in *Roe*, addressed the NARAL board in spring of 1974, convincing them of “the efficacy of rights-based arguments tied to gender equality.”⁵⁶ Ziegler writes that, in the following years, arguments about women’s rights and the Constitution “became more central to NARAL’s strategy.” In 1977, when President Jimmy Carter invited NARAL to the National Women’s conference, they grounded their presentation in right-to-choose arguments. Betty Friedan describes “Right to Life men” leading a demonstration with pictures of pickled fetuses; in response, NARAL raised a banner with the Statue of Liberty raising a torch over the words “right to choose.” Outside the conference center, NARAL demonstrators faced protestors with a chant of “choice, choice, choice.”⁵⁷ This was a pivotal moment in the evolving language of abortion rights. The post-*Roe* endorsements of public health concerns mixed with more nuanced arguments about privacy and Constitutional rights became distilled to a single word: “choice.” In many ways, the word captures the spirit of the women’s rights-based arguments for abortion, and its metonymic nature lent itself towards a unified rallying cry for the movement. It is difficult to chant, “we support women’s Constitutional right to privacy, bolstered by the public health interests of the State!” However, rhetorical simplicity often comes at the cost of intellectual precision, and this would prove to be the case for “choice.”

The Right-To-Life After *Roe*

Ziegler also addresses the role of *Roe* in changing the strategies and rhetoric of the right-to-life movement. While the language of women's rights that was—at least partially—present in the *Roe* decision became a unifying force for abortion rights activists, some who were sympathetic to the population control movement disliked the idea that women were entitled to some abortions. As abortion rights groups, especially Planned Parenthood, moved away from population control and focused on equal access to abortion in pursuit of racial and social equality, many of the civil rights activists who had once supported restrictions on abortion (such as Rev. Jesse Jackson and Sen. Edward Kennedy) became more comfortable with the idea of legalization.⁵⁸ With the loss of many of their strongest supporters, right-to-life activists formed an uneasy coalition with the political right.

The Political Split

In the decade after *Roe*, the main political goal of the right-to-life movement was the passage of a Human Life Amendment (HLA). Both the National Right to Life Committee (NRLC) and the National Conference of Catholic Bishops (NCCB) declared that the only sure pathway to protecting the unborn would be a Constitutional amendment, and a significant number of right-to-lifers agreed. A week after *Roe*, Rep. Lawrence Hogan of Maryland introduced an HLA for congressional consideration. The proposal read: “Neither the United States nor any State shall deprive any human being, from the moment of conception, of life without due process of law.”⁵⁹ Sen. Jesse Helms of North Carolina introduced an identical proposal in the Senate. The goal of an HLA was to put an immediate—and likely permanent—end to abortion in the United States, as

well as forbidding euthanasia. Sen. James Buckley of New York introduced a competing version of the HLA, which sought to define “person” in the Fifth and Fourteenth Amendments as including the unborn “at every stage in their biological development” and included an exception to save the life or health of the mother.⁶⁰ At this point, the right-to-life movement was still very much bipartisan, and there were a large number of right-to-life Democrats in both houses of Congress. However, the HLA was the beginning of a political division in the movement; right-to-life Republicans were much more likely than right-to-life Democrats to support the HLA. Right-to-life Democrats, like the early feminists, often believed that abortion was a negative symptom of larger social causes and should be addressed by looking at root issues rather than by banning it, especially in the extreme nature of a Constitutional amendment.⁶¹ Although the hierarchy of the Catholic Church in the U.S. was strongly in favor of the HLA, some pro-life Catholics worried that the focus on a ban to the exclusion of all other solutions was divisive and impractical. In 1974, the liberal Catholic journal *Commonweal* warned that if right-to-life activists focused all of their efforts on the HLA, “the anti-abortion cause will become the political tool of the right wing, of those who would resolve complex political problems with instant constitutional amendments.”⁶² Although Catholics had a long relationship with the Democratic Party, Williams suggests that the insistence of the Catholic bishops on the HLA and the growing power of feminism among Democrats began to chafe at their connection.⁶³

The relationship continued to erode over the course of the 1970s. For the 1976 Presidential election, the GOP endorsed a Constitutional amendment to “restore protection of the right to life for unborn children,” although it was vague about whether

that would be the HLA or an amendment giving decision-making power to the states.⁶⁴ The Republican nominee, Gerald Ford, was not enthusiastic about right-to-life efforts, but primary challenger Ronald Reagan's staunch support of the HLA pushed Ford's position to the right.⁶⁵ In the same election, the Democrats attempted to tread a carefully moderate path, not wanting to alienate their voters who opposed abortion. Their platform, like the GOP's, acknowledged the diversity of beliefs among voters but opposed the HLA, calling it "undesirable." Considering that the California state Democratic Party had proposed wording that would explicitly endorse the right to bodily autonomy, a careful rejection of the HLA with no further support for abortion rights seemed like the centrist position for the party and for their nominee, Jimmy Carter. However, to opponents of abortion, their opposition to the HLA read as endorsing the same legal position as abortion rights activists. Ten thousand right-to-life activists gathered outside the convention hall to protest the new Democratic Platform.⁶⁶

Although the HLA was the movement's primary focus, they had other legislative victories. Sen. Helms successfully passed a legislative amendment to the Foreign Assistance Act in 1973, preventing U.S. Foreign Aid money from going to abortion services.⁶⁷ The Hyde Amendment, passed in 1976, was its domestic policy counterpart, barring almost all federal funding for abortions inside the United States. This stopped Medicaid coverage of abortions and started a wave of new state restrictions on abortion funding.⁶⁸ The Mexico City Policy, also called the "global gag rule," was implemented by President Ronald Reagan's executive order in 1984. The policy cuts off federal funding to foreign NGOs who provide abortion services, referrals, counseling, or information or who advocate or promote abortion in any way. The Mexico City Policy

has been revoked by every Democratic president and re-instituted by every Republican president, ever since 1984.⁶⁹ If there is a single political figure who anchored the right-to-life turning point from bipartisan to politically conservative, it is certainly Reagan. His endorsement of the HLA in the 1980 election was the first from a presidential candidate of either party, and he received overwhelming support from the right-to-life movement. Even though the majority of Republicans supported the right to legal abortion, Reagan's eager support for the HLA had set the course for party leadership. Most Republican politicians who favored the right to choose soon left the party, either voluntarily or by losing reelection.⁷⁰ That same year, the Democratic Party reaffirmed its support for *Roe*, and the political partisanship was fully sealed.

Evangelical Allies

This political partisanship coincided with (and was almost certainly accelerated by) the rapidly increasing number of evangelical Christians in the pro-life movement.ⁱ While evangelicals did not have the guidance of official Church hierarchy in the same way the Catholics did, several influential televangelists, pastors, and evangelical writers, such as Francis Schaeffer and Jerry Falwell, helped to popularize the pro-life position among their followers.⁷¹ Catholics still grounded the movement, and though they—at least initially—differed in their approach to the theology and philosophy of the matter, they formed a strong political partnership. Catholics were motivated by Church social teaching that gave them sympathy for marginalized groups, and they considered the unborn to be one such group. Helping them was a matter of human rights. Williams

ⁱ After 1980, I refer to the two movements as “pro-life” and “pro-choice.” The conclusion of this chapter contains a chronology of the terms’ emergence in the mid-1970s.

explains that, for evangelicals, pro-life activism was part of a “broader campaign to restore Christian morality in America.” Their brand of religious social conservatism linked abortion to sexual promiscuity, gay rights, pornography, and feminism; each of these was a force of immorality corrupting America’s culture and values.⁷² A belief in the sanctity of marital sex had been one of the cornerstones for the early Catholic right-to-life movement, but as they attempted to bring non-Catholics into the movement in the 1960s, they had shed many of the pieces of explicitly Catholic doctrine that had been alienating to non-Catholics. However, in the 1980s, the evangelicals were firm in their belief that abortion was linked to sexual immorality; discussion of cultural norms around sexuality crept back into the pro-life movement after nearly two decades of absence. Through most of the 1980s, Catholic and evangelical pro-life organizations remained largely separate, but they began to work together in earnest in the late 1980s on a campaign called Operation Rescue.⁷³

Dismayed by the lack of movement towards pro-life goals and the failure to secure a Human Life Amendment, activists in the late 1980s and early 1990s began tactics of direct action and civil disobedience. Operation Rescue was the main strategic force behind the actions, organizing tens of thousands of people, mainly Catholics and evangelicals, to illegally block the entrances to abortion clinics and display graphic images of aborted conceptuses. By 1991, forty thousand Operation Rescue volunteers had been arrested.⁷⁴ For the most part, these protests remained nonviolent, but the idea of breaking the law to achieve a higher goal sometimes translated into violence. For a few, most notably the organization called “Army of God,” violence against abortion providers was justified since it potentially saved the lives of hundreds or thousands of unborn

children. In the late twentieth century, protestors attacked over 200 abortion clinics, often by firebombing them. They also murdered seven clinic personnel, including doctors and administrators.⁷⁵ Although the violence took a sharp downturn at the end of the 1990s, it has not ceased entirely. Dr. George Tiller, an abortion provider, was murdered in 2009, while attending a church service. He had previously survived one other assassination attempt. In 2015, a self-described “warrior for the babies” shot multiple people in a Planned Parenthood in Colorado Springs, killing three.⁷⁶ Major pro-life organizations have unanimously denounced violence as a tactic, with the NRLC even discouraging nonviolent civil disobedience.⁷⁷ Nevertheless, the well-publicized attacks and murders damaged the image of the pro-life movement. Williams reports that in 1995, 61% of Americans said they believed that the pro-life movement encouraged violence. Since abortion opponents had spent decades referring to abortion as a “genocide” and comparing it to the Holocaust, many people were unsurprised when that powerful rhetoric encouraged a few individuals to stop the “genocide.”⁷⁸

Pro-Life Politics in the 21st Century

By the early 2000s, the violence against abortion providers had largely stopped (with some notable exceptions), and the debate over abortion “moved out of the streets and back into the halls of Congress and state legislatures,” where the pro-life movement began gathering some political success. George W. Bush signed the Partial Birth Abortion Act in 2003, banning a particular abortion method (Dilation & Extraction) used primarily after 20 weeks of pregnancy. This was the first time the U.S. federal government had prohibited any abortion procedure. Williams argues that this, along with

a 2007 Supreme Court decision upholding the Act, “emboldened” state legislatures to create their own limits on abortion. In the 2010s, several states implemented new kinds of restrictions, such as mandatory ultrasounds and waiting periods, which were intended to make it more unpleasant or more difficult for a woman to obtain an abortion without banning the abortion itself. States also placed heavy constraints on the clinics themselves, requiring physicians to obtain admitting privileges at a nearby hospital, and increasing the minimum size and other physical requirements for the buildings. These kinds of indirect abortion restrictions focused on providers are commonly referred to by their opponents as TRAP laws [Targeted Regulation of Abortion Providers].⁷⁹ TRAP laws have a high rate of success at reducing access to legal abortion; in 2013 alone, fifty abortion clinics closed, many in states where it was already difficult to obtain an abortion.⁸⁰ As Williams remarks, despite their failure to overturn *Roe* or pass an HLA, “pro-lifers had done the next best thing: they had turned the country back to a situation that was remarkably similar to the one that had existed immediately before *Roe v. Wade*.”⁸¹

Conclusion

The transition to rights-based language had significant impacts in the 1960s and 1970s. For the right-to-life movement, it initially meant opening the movement to a cadre of individuals and groups who cared about human rights and were willing to extend those rights to the conceptus, without necessarily relying on Church doctrine. For advocates of legal abortion, the new focus on women’s rights-based messaging and the abandonment

of population control ideology meant the formation of new coalitions with other left-leaning movements.

There isn't one distinct moment in the emergence of the term "pro-choice," although a 1990 article in the *New York Times* claims that it first appeared in print on March 20, 1975 in Alan L. Otten's column in the *Wall Street Journal*. Otten remarked that "both right-to-life and pro-choice forces agree the abortion issue is going to be around for a long time."⁸² The author of the 1990 article, William Safire, notes that "pro-life" first emerged in print less than a year later on January 18, 1976 in a *NYT* article about the role of clergy in the abortion debate. That article, by George Dugan, reports on Catholic bishops' proposal of a "pastoral plan for pro-life activities."⁸³ Since the latter quote is directly from the bishops' plan, the use of "pro-life" was undoubtedly a part of their organizing activities for its namesake campaign; Dugan did not invent the word. It is unclear whether Otten coined the term "pro-choice" himself, extending the abortion rights' movement's focus on "choice" in order to form a useful adjective or whether he had previously heard the term used by activists. Whatever the case, both "pro-life" and "pro-choice" quickly gained traction in the latter half of the 1970s, likely due to their clever political framing and two-syllable simplicity. Much of the groundwork in creating the strategy of the terms had already been accomplished prior to their actual usage. The introduction of the rights-based framework for abortion advocacy had provided a neat counter to the already-established messaging of the right-to-life movement, creating the false symmetry that paved the way for the binary of pro-choice and pro-life. The simplification of the right-to-life movement's original beliefs on sexuality, gender roles, human nature, and autonomy into a singular focus on the personhood and rights of the

conceptus stayed consistent with its new language of “pro-life.” The removal of the rhetorical focus on rights also meant easier connection with pro-life evangelicals who were not entirely motivated by a human rights framework. A similar effect occurred within the abortion rights movement, with the once-varied arguments in favor of legalized abortion reduced to a single word, “choice,” even before the addition of its prefix. However, what was a small change in wording in the mid-1970s has since become its own phenomenon with contemporary impacts quite different than those of the rights debate in past decades. Chapter Five grapples with the consequences of those changes in rhetoric and the resultant formation of the broad, multiplicitous, and sometimes ambiguous meanings of “pro-choice” and “pro-life.”

Notes to Chapter IV

¹ In addition to my historical sources, I have found Google’s Ngram tool to be invaluable in tracking the use of certain language and phrases over the past two centuries.

² Suzanne Staggenborg, *The Pro-Choice Movement: Organization and Activism in the Abortion Conflict*. New York: Oxford University Press. 1991.

³ Staggenborg, 22.

⁴ Lawrence Lader, quoted in Staggenborg, 22.

⁵ Staggenborg, 22.

⁶ Luker, 123.

⁷ Staggenborg, 23.

⁸ Staggenborg, 15.

⁹ Staggenborg, 15.

¹⁰ Staggenborg, 15.

¹¹ Reagan, 241.

¹² Luker, 123.

¹³ Luker, 123.

¹⁴ Lawrence Lader, "Women, Doctors & Abortion," *New York Times*. June 3, 1984. <<https://www.nytimes.com/1984/06/03/books/l-women-doctors-abortion-234971.html>>

¹⁵ Luker, 63.

¹⁶ Luker, 65.

¹⁷ Luker, 80.

¹⁸ Luker, 81.

¹⁹ Luker, 81.

²⁰ Staggenborg, 14-15; 28.

²¹ Staggenborg, 20.

²² Staggenborg, 20.

²³ Staggenborg, 25.

²⁴ Staggenborg, 25.

²⁵ Staggenborg, 27.

²⁶ "Issues," NARAL Pro-Choice America. <<https://www.prochoiceamerica.org/issues/>>

²⁷ Jennifer Lee, "Abortion Rights Group Plans A New Focus and a New Name," *New York Times*. Jan. 5, 2003. <<https://www.nytimes.com/2003/01/05/us/abortion-rights-group-plans-a-new-focus-and-a-new-name.html>>

²⁸ Staggenborg, 35.

²⁹ Daniel K. Williams, *Defenders of the Unborn: The Pro-Life Movement Before Roe v. Wade*. New York: Oxford University Press, 2015. 2.

³⁰ Williams, 3.

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- ³¹ Williams, 4.
- ³² Williams, 4.
- ³³ Williams, 20.
- ³⁴ Williams, 21-2.
- ³⁵ Luker, 188.
- ³⁶ Williams, 6.
- ³⁷ Williams, 5.
- ³⁸ 89. *Roe v. Wade*, 410 U.S. 113, 164-165 (1973); *Doe v. Bolton*, 410 U.S. 179, (1973).
- ³⁹ "Amendment XIV," Legal Information Institute, Cornell University.
<<https://www.law.cornell.edu/constitution/amendmentxiv>>
- ⁴⁰ *Roe*, 153.
- ⁴¹ *Roe*, 158.
- ⁴² Mary Ziegler, "The Framing of a Right to Choose: *Roe v. Wade* and the Changing Debate on Abortion Law," *Law and History Review*, 27(2): Summer 2009. 282.
- ⁴³ Ziegler, 328.
- ⁴⁴ Harriet Pilpel, "The Public and Private Aspects of the Problem," *New York Times*, June 14, 1970, 252. <<https://www.nytimes.com/1970/06/14/archives/the-public-and-private-aspects-of-the-problem-abortion.html>>
- ⁴⁵ Ziegler, 303.
- ⁴⁶ Eileen Shanahan, "Doctor Leads Group's Challenge to Anti- Abortion Law," *New York Times*, October 5, 1971, 28.
<<https://timesmachine.nytimes.com/timesmachine/1971/10/05/79156112.html?pageNumber=28>>
- ⁴⁷ Shanahan
- ⁴⁸ *Roe*, 150-151.
- ⁴⁹ *Roe*, 153; 164-5.

⁵⁰ *Roe*, 164.

⁵¹ *Roe*, 153-4.

⁵² Ziegler, 298.

⁵³ Ziegler, 321.

⁵⁴ Ziegler, 321-2.

⁵⁵ Ziegler, 315.

⁵⁶ Ziegler, 315.

⁵⁷ Ziegler, 316.

⁵⁸ Ziegler, 325; 329.

⁵⁹ Williams, 213.

⁶⁰ Williams, 213.

⁶¹ Williams, 216.

⁶² Williams, 218.

⁶³ Williams, 219-220.

⁶⁴ Williams, 232.

⁶⁵ Williams, 230.

⁶⁶ Williams, 228-9.

⁶⁷ Sneha Barot, "Abortion Restrictions in U.S. Foreign Aid: The History and Harms of the Helms Amendment," *Guttmacher Policy Review*, 16(3): September 2013.

<<https://www.guttmacher.org/gpr/2013/09/abortion-restrictions-us-foreign-aid-history-and-harms-helms-amendment>>

⁶⁸ Williams, 235.

⁶⁹ Barot, *Guttmacher Policy Review*.

⁷⁰ Williams, 242.

⁷¹ Williams, 237.

⁷² Williams, 236-7.

⁷³ Williams, 254.

⁷⁴ Williams, 263.

⁷⁵ Williams, 263-4.

⁷⁶ Sarah Kaplan, “I’m a Warrior for the Babies,’ Planned Parenthood Suspect Declares in Court,” *The Washington Post*. Dec. 10, 2015. <https://www.washingtonpost.com/news/morning-mix/wp/2015/12/10/im-a-warrior-for-the-babies-planned-parenthood-suspect-declares-in-court/?utm_term=.28aa60199f0e>

⁷⁷ Williams, 263.

⁷⁸ Williams, 264.

⁷⁹ “Targeted Regulation of Abortion Providers (TRAP),” *Center for Reproductive Rights*. Aug. 28, 2015. <<https://www.reproductiverights.org/project/targeted-regulation-of-abortion-providers-trap>>

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⁸¹ Williams, 265.

⁸² William Safire, “On Language; Right On, Dead-On,” *New York Times*. Sept. 16, 1990. <<https://www.nytimes.com/1990/09/16/magazine/on-language-right-on-dead-on.html?ref=williamsafire>>

⁸³ George Dugan, “New Drive To End Abortion Scored,” *New York Times*. Jan. 18, 1976. 23. <<https://timesmachine.nytimes.com/timesmachine/1976/01/18/79747785.html?pageNumber=23>>

CHAPTER V: THE MORALITY PROBLEMS OF PRO-X

Chapter Four established the mid-century philosophical origins of the contemporary pro-choice and pro-life movements and their ideological changes in the late 1970s. This chapter brings this lineage into the present day and tackles some of the modern impacts of abortion's socio-political history. This chapter is devoted to the philosophical implications in the current "pro-x" language and the significance of those largely-unspoken philosophical frameworks. Both pro-life and pro-choice philosophies primarily operate on three levels: 1) rights-based arguments, 2) utilitarian public health arguments, and 3) appeals to certain conceptions of moral law, such as the sacred relationship between sex and procreation. While all three of these feature prominently in popular abortion rhetoric, those who utilize these arguments frequently use one moral framework to rebut another (e.g. arguing that conceptuses should not have rights because an increase in illegal abortions would be a massive social harm) without doing the important metaethical first step of justifying why a certain moral system should take precedence in that case. The ignorance surrounding the philosophical claims in popular pro-x arguments further complicates their meaningful usage.

The Philosophical Commitments of Pro-Life and Pro-Choice

In Chapter Four, I explained the role of rights-based arguments, utilitarianism, and moral law in traditional arguments for and against abortion access. Although rights-based arguments are a significant and multi-faceted component of arguments both for and against abortion, the latter two philosophical approaches have become affiliated primarily with one side or the other. In the discussion of philosophical arguments in this chapter, I

will sometimes use “narrative” nearly interchangeably with “argument.” My goal is to track the underlying moral arguments in the abortion debate, but since popular discussion of the topic is frequently unclear on its moral framework(s), the work of tracking moral arguments often depends on the development and analysis of particular thematic narratives, from which I seek to discern those arguments. The word choice of “narratives” alongside “arguments” presupposes that the former is derived from the latter and that the former is more accessible and clearly demarcated and so useful in unraveling the latter.

Utilitarianism

Arguments predicated on the “utilitarianism” of certain policies continue to hold considerable sway in the abortion debate. As explained by J.S. Mill:

The creed which accepts as the foundation of morals, Utility, or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure, and the absence of pain; by unhappiness, pain, and the privation of pleasure.¹

What is often emphasized in explanations of utilitarianism is its focus on the well-being of others besides the individual. Mill argues that, in determining the morality of an action, “that standard is not the agent's own greatest happiness, but the greatest amount of happiness altogether.”² So, in some capacity, utilitarianism is a natural fit for moral arguments about law and policy. Utilitarian arguments (primarily public health concerns) were very often used by physicians in the 19th century to argue for restricted access to abortion; however, in the 20th century, the two most significant utilitarian public health positions on abortion have been those of the population control movement and those arguing for legal access to abortion on the grounds that illegal abortions lead to greater mortality rates for the women who seek them. Collectively, these are the “policy-based”

concerns that Mary Ziegler frames in contrast to rights-based concerns in Chapter Four. Both population control and the health crisis of unsafe abortions are arguments in favor of increased abortion access, although only the latter could properly be called “pro-choice,” since population control arguments fell out of favor in the movement prior to its transition to the language of “pro-choice.” The argument for legal abortion on the grounds of public health concerns has been a major facet of the pro-choice movement and its predecessors since the mid-century. It received increased attention and validation after the *Roe* decision, where Justice Blackmun wrote that the state had interests in “protecting the woman’s health and safety.”³ The popular use of this argument relies on the message that making abortions illegal does not stop abortions; it merely makes them more dangerous. This is not an argument for the moral permissiveness of abortion itself; it is an argument for the moral imperative of *legalizing* abortion in order to preserve women’s health. The image of a wire coat hanger, symbolizing women performing dangerous abortions on themselves, is still a powerful and prevalent motif in arguments for legal abortion.

Discussion of abortion is also frequently folded into the larger package of “women’s health care,” or sometimes just “health care.” While this is not an inaccurate association to make, the almost-euphemistic use of “women’s health” in discussions of abortion makes it easier to argue that lack of support for abortion access equates to a lack of support for women’s health. This is especially true in the case of Planned Parenthood. Planned Parenthood’s 2017-2018 Annual Report lists abortion services as comprising 3.4% of all medical services provided.⁴ Yet, Planned Parenthood is often politically synonymous with abortion, and the repetitive attempts to remove all federal funding from

the organization center entirely on its abortion services. In 2012, Planned Parenthood Federation of America (PPFA) rebranded with a new tagline, “Care: No Matter What.”⁵ The organization’s political advocacy branch, Planned Parenthood Action Fund (PPAF), adopted the slogan, “Act: No Matter What.” For decades, Planned Parenthood has been struggling to change their image from abortion provider to health care provider, in order to more accurately reflect the range of services they provide. However, it is easy for pro-choice activists to use signs and taglines meant to convey the range of non-abortion services that Planned Parenthood offers and use them in a different context. A sign that says, “Protect Women’s Health,” held during a rally to support funding for PPFA, might mean “Planned Parenthood provides women’s health services like breast cancer screenings and pap smears, and a lack of funding for the organization means a lack of funding for those services.” That same sign, held during a celebration of the 40-year anniversary of *Roe v. Wade*, unmistakably means, “abortion is a kind of healthcare, and in order to adequately support women’s health, we must support access to abortion.” That a slogan can mean two different things in two different contexts is hardly a phenomenon limited to the abortion debate, but the rebranding efforts of the largest abortion provider in the United States, attempting to bring recognition to its non-abortion healthcare, has made it gradually easier for the pro-choice movement to argue that access to abortion *is* access to healthcare. Although PPFA is supportive of that message, it is nonetheless significant that pro-choice public health discourse around abortion has shifted from an avoidance of a negative health impact (deaths from unsafe abortions) to also include the promotion of a positive health impact (providing a kind of health care).



Coat hangers and public health signs used in rallies for legal abortion^{6,7,8}

Pro-Life Responses

The pro-life movement, in turn, has largely rejected a utilitarian-public health framework for its arguments. To be clear, when I use “utilitarian” here, I use it in the way its critics and supporters have utilized it in reference to abortion (see Ch. 4), which is in the context of public health and exclusive of rights-based arguments. Of course utilitarianism can be, and often is, used within a rights-based framework to adjudicate between competing rights on the grounds that preference to a certain right would provide the greatest benefit for the greatest number. In that context, utilitarianism is frequently used by the pro-life movement in order to argue for preferencing of the rights of the conceptus. However, that application of utilitarianism concedes the existence and primacy of rights—it rarely, if ever, weighs (in good faith) the benefits of a right against the benefits of a categorically different good—and so can perhaps be better thought of as means of decision-making within a rights-framework rather than its own kind of moral

framework. The case for referring to the rights-exclusive arguments for public health as “utilitarianism” is perhaps susceptible to some of the same criticisms, but it is not conspicuously subordinate to another moral framework, and it has been historically criticized and lauded in the name of utilitarianism. So, for these purposes, the public health arguments for (and against) abortion will be labeled “utilitarian.”

Pro-life attempts to counter public health arguments often focus on statistics involving the increased risk of breast cancer in women who have had an abortion and mental health effects such as “post-abortion syndrome,” a term not recognized by the medical community that pro-life groups often use to encompass any negative emotional effects that a woman may experience following an abortion.⁹ The claim that there is a causal relationship between abortion and breast cancer has been massively disputed by the broader scientific community, with a number of prominent studies concluding that there is no increased risk factor for breast cancer following an induced abortion.¹⁰ Although this more woman-oriented approach to pro-life advocacy serves the important function of providing a counter to pro-choice activists who claim that the other side doesn’t care about women, it does not engage with these harms as public health concerns, preferring to focus on the harm to individual women. This is fitting for the medium of this messaging, which is often distributed to women who visit Crisis Pregnancy Centers (CPCs) looking for guidance on their own pregnancy decisions. Though the (arguably pseudo-)scientific nature of these arguments seem somewhat parallel to pro-choice arguments about the health risks of illegal abortions, the latter is not aimed at affecting the behavior of individual women and the former is not targeted at policy change.

A 2007 *New York Times Magazine* cover story on “post-abortive syndrome” attributes much of the rise in woman-centered rhetoric in the pro-life movement to a 1996 book, *Making Abortion Rare*, by David Reardon.¹¹ In the book, Reardon lays out an argument for the pro-life movement directing attention to the harm abortion does to women rather than focusing solely on the conceptus. The *Times* article quotes Reardon pushing for an increased role in woman-focused rhetoric: “We must change the abortion debate so that we are arguing with our opponents on their own turf, on the issue of defending the interests of women.” Although the majority of pro-life rhetoric is still centered on the conceptus, “pro-life, pro-woman” language has established a significant place in the pro-life movement of the 21st century. On protest signs, bumper stickers, and billboards, the slogans, “Abortion Hurts Women” and “Love Them Both” have become ubiquitous, the latter often accompanied by a subtitle: “Abortion: Kills One, Hurts Another.” During the 2017 March for Life, popular pro-life signs included “Woman Deserve Better Than Abortion” and those with messages about the harm done to female conceptuses via abortion. Rhetoric countering pro-choice utilitarian arguments about women’s health “on their own turf” have primarily taken two forms: arguments that abortion is harmful (both physically and psychologically) to women who receive them, and arguments that abortion is a woman-centered public health concern insofar as it kills females before they are born. This last approach combines the public-health language of pro-choice utilitarian arguments with the orientation towards the conceptus that marks the majority of pro-life rhetoric. Certain groups, particularly those associated with feminism, such as Feminists for Life and New Wave Feminists have made this message part of the core of their organizations. However, it is not one of the most prominent pro-life

approaches, perhaps out of an acknowledgment that, in appealing to women's rights, fully equivocating between conceptuses carrying XX genes and pregnant adult women is not particularly plausible nor compelling. Where pro-life messaging does address women, it primarily focuses on the perceived impacts on adult women and applies that messaging in more private settings rather than using it as the basis for policy proposals. Though there has been a move over the last two decades to match the social and political effectiveness of the pro-choice movement's woman-centered language, the pro-life movement still largely shies away from anything that would resemble a true public-health utilitarianism approach on the scale of pro-choice arguments about deaths from illegal abortions.



Rally signs focusing on abortion's negative impacts on women ^{12,13}

Religion and Moral Law

If utilitarianism belongs to the pro-choice movement, appeals to absolute moral law (exclusive of rights-based arguments) are almost entirely the domain of the pro-life movement. To be clear, when I say “moral law,” I refer to any argument derived from an appeal to universal moral principles, excepting ideas of natural rights, which I cover below. This is an umbrella encompassing a variety of ideas about what constitutes the

immovable moral order of the universe, although the majority of these rely on some kind of religious framework.

As discussed in Chapter Four, ideas about the relationship between moral law and abortion were a significant part of the early right-to-life movement. However, since they were associated with Catholic doctrine, narratives about divine moral law were largely removed from the main talking points of the right-to-life movement in the 1960s as they attempted to broaden their appeal to Protestants and other non-Catholics, who were often wary of using Catholic moral teachings as the basis for a non-sectarian movement. With the introduction of civil rights language and methodology during that decade and the addition of prominent non-Catholic supporters, rights-based language took precedence over arguments from divine moral law. However, the massive influx of evangelical Christians in the 1980s, many of whom had their own interests in theologically-derived arguments, brought some of the old moral law discourse back into the pro-life movement. Given the present-day correlation between religious orthodoxy and anti-abortion attitudes in the United States, it makes sense that moral law derived from religious tenets would hold more sway than it did when the right-to-life movement was aligned with anti-war and civil rights movements.

Today, it is frequently taken for granted by many Americans that the pro-life movement has stronger religious ties than the pro-choice movement, but the data from sources such as the General Social Survey (GSS), administered by the National Opinion Research Center at the University of Chicago, speak to the nuances in the relationship between religion and views on abortion. A 2017 publication by Steven T. Yen and Ernest M. Zampelli in *The Social Science Journal* pooled five years of results from the GSS and,

diverging from the majority of previous literature on religion and abortion, separated religiosity (the strength of one's faith and frequency of religious practice) from religious orthodoxy (the fundamentalism of their religion, and adherence to strict and literal interpretations of religious texts).¹⁴ Yen and Zampelli found that a high degree of religious orthodoxy reduces the probability of support for legalized abortions—the model does account for a number of different legal abortion scenarios—while a high degree of religiosity actually increases the probability of support for legalized abortions. The authors note that this is consistent with previous findings by Jared Piazza published in *The International Journal for the Psychology of Religion* that an individual's degree of "religiosity" affects their preference for rule-based (used interchangeably with "deontological") versus outcome-based (used interchangeably with "consequentialist") moral thinking.¹⁵ Although Piazza does not distinguish between religious strength and religious orthodoxy in the same manner as Yen and Zampelli, he defines religiosity as "degree of commitment to a religion, its doctrines, and practices" and singles out "Christian Orthodoxy" as a particularly strong example of this. This suggests that Piazza is using "religiosity" to mean something more akin to Yen and Zampelli's "religious orthodoxy" than the latter's definition of "religiosity." Piazza concludes that religiously orthodox individuals "may be more persuaded by moral rhetoric emphasizing the upholding or infringing of moral rules, whereas nonreligious individuals may be less swayed by such arguments, being equally concerned about the broader social ramifications of an action." He also identifies this difference as a "potential source of friction in public moral discourse."¹⁶ Indeed, if we extend this to Yen and Zampelli's model and (loosely) correlate a lack of support for legalized abortion with a deontological

moral orientation and a support for legalized abortion with an equal attention to consequentialist thinking, this aligns with the pro-life tendency toward moral law rhetoric and the pro-choice tendency towards utilitarian rhetoric. This conclusion is by no means a perfect application of the two studies at hand, but it holds some explanatory value for the relationships between beliefs on abortion and broader moral thinking that goes beyond the usual vague conjectures surrounding abortion and religion.

Together, Yen and Zampelli's findings on the differences between religiosity and religious orthodoxy regarding attitudes towards legalized abortion and Piazza's findings on religiously orthodox individuals' preferences for rules-based moral thinking helps to account for the renewed use of moral law rhetoric in pro-life arguments with the increased participation of evangelical Christians in the movement, despite their lack of shared doctrine with the Catholic Church. Evangelical Christianity accesses religious orthodoxy through strict and literal interpretations of the Bible, while Catholicism relies heavily on the doctrines and practices of religious tradition and a concrete hierarchical authority. Other Protestant denominations that are vocal in the pro-life movement, such as the Church of Jesus Christ of Latter-Day Saints, often demonstrate many of the same requirements of orthodoxy from their members. It is worth noting that Yen and Zampelli discuss religious orthodoxy as it applies to individuals, whereas I have been talking about the relative fundamentalism or doctrinal-adherence of the religions themselves. It would certainly be unfair to say that all Catholics are religiously orthodox—and the most recent data from Pew Research Center shows that 51% of Catholics say that abortion should be legal in all or most cases—however, there are elements of a religion that can either encourage or discourage Yen and Zampelli's "orthodoxy" in its members.¹⁷ Christian

denominations (I have not been as attentive to the role of non-Christian religions in the American pro-life movement since their presence, though existent, is significantly smaller) that encourage orthodoxy through strong hierarchical authority, strict Biblical interpretation, or both, are the bedrock of the contemporary pro-life movement.

Although the reasoning of divine moral law can be compelling to both Catholics and evangelical Christians, the contents of Catholic moral law is based primarily on Church doctrine, which includes papal encyclicals, the Catechism, and traditional Catholic social teaching as clarified by Church authorities. Moral law as understood by evangelicals more often comes directly from Biblical passages. Although these, too, are often the product of interpretation by respected religious leaders, evangelical Christianity typically rejects the idea that God speaks primarily through certain ordained authorities, so while the Biblical interpretation of a prominent pastor such as Jerry Falwell or Pat Robertson— both of whom were instrumental in advancing anti-abortion positions among evangelicals— may be taken very seriously, the reasoning behind the broad adoption of that interpretation does not (explicitly) rely on the idea that this individual has a more privileged relationship with God than an ordinary member of the congregation. Despite the differences in origin, Catholics and evangelicals appear to agree on the basic tenets of moral law as they relate to abortion. Appeals to absolute moral law in pro-life arguments can be generally grouped into three categories: 1) the inherent worth of all human life, 2) women's role as mothers, 3) the nature of sexuality.

Inherent Worth

Although not explicitly derived from Kant, the pro-life belief that all humans, including conceptuses, have intrinsic value and dignity shares a number of similarities to

Kant's philosophy. The plank of Kant's categorical imperative, which states that people are ends in themselves, is frequently used to counter utilitarian moral arguments, and it is founded in a belief that humans have "intrinsic worth, i.e. dignity."^{18j} The relevant extension of that position—that all human life, beginning at conception, has inherent worth—is shared by most major pro-life groups, regardless of religion. This is distinct from the argument that a conceptus has certain rights, including the right to life. However, it is closely tied to arguments of personhood from conception, which I will discuss later in this chapter. Inherent worth of the conceptus is a claim that a human life is, from the point of conception, something valuable and worthy of preservation, regardless of the interests of the conceptus itself. Different groups defend this relatively broad claim (which could also be interpreted as a set of claims sharing similar properties) in different ways. The United States Conference of Catholic Bishops affirms the "life and dignity of the human person," with their website stating: "The Catholic Church proclaims that human life is sacred and that the dignity of the human person is the foundation of a moral vision for society."¹⁹ This is supported by twelve Bible passages and quotes from the Catechism, the proclamations of the Second Vatican Council (Vatican II), and various papal encyclicals. The National Right to Life Committee (NRLC) states that its mission "is to protect and defend the most fundamental right of humankind, the right to life of every innocent human being from the beginning of life to natural death... National Right to Life carries out its lifesaving mission by promoting respect for the worth and dignity of every individual human being."²⁰ This mission statement is grounded in rights-based rhetoric (the organization is, after all, the National *Right* to Life Committee), but it also

^j Since Kant argues that this worth is derived from humans' capacity for reason, it is not clear that all conceptuses would be afforded such dignity under a strict interpretation of Kantian morals.

relies on an agreement of the inherent worth and dignity of all humans. Moral law that deals with inherent worth is very frequently used side by side with arguments about the rights of conceptuses, but the two ought to be philosophically distinguished, as they rest on different moral premises.

Sometimes, the argument for inherent worth comes from purely theological roots, or goes unsupported, but it is often explicitly tied into philosophical arguments on human nature. Focus on the Family (FotF), a prominent conservative, non-denominational Christian organization, quotes philosopher David Boonin on their website: “A human fetus, after all, is simply a human being at a very early stage in his or her development.”²¹ They go on to make an argument about the “non-essential differences” between born humans and conceptuses in order to support the claim that both share a distinct human nature from the moment of conception. Although Focus on the Family’s website is not dedicated to making a refined philosophical case, the character of their argument is remarkably similar to John T. Noonan’s famous article, “Abortion is Morally Wrong,” in which Noonan argues that the things that we rely on to distinguish conceptuses from born humans, such as viability, experience, social visibility, are not justification enough to abort an entity with human DNA and its own genetic code. The quote FotF begins with is very much taken out of context; in the book it was pulled from, *A Defense of Abortion*, Boonin argues against the idea of an “essential property” in humans or a certain sanctity of human life that begin from conception. The book is, as it plainly claims to be, a defense of abortion.²² However, that irony aside, FotF’s claim of immorality on the grounds of a shared and valuable human nature certainly has a philosophical flavor beyond religious orthodoxy.

Culture of Life

Though it is distinct from idea of inherent worth, the argument for a “culture of life” also draws upon moral law to defend the dignity of all human life. Instead of focusing on the importance of an individual life in utero, the “culture of life” narrative argues that pro-life advocacy must go beyond legal battles and work to build a culture that values human life in all its forms from conception until natural death. Although Pope John Paul II used the term in his 1995 encyclical, *Evangelium Vitae*, it was not widely popular outside of Catholic organizations before this decade.²³ The “culture of life” opposes abortion, capital punishment, and physician-assisted suicide, but its recent popularity among young pro-life activists, especially young women, has lead it to take on a broader meaning than most contemporary pro-life concepts. Its proponents sometimes offer support for measures like the Affordable Care Act, increased action against sexual violence, and an end to torture and “unjust war.”²⁴ These beliefs are in line with traditional Catholic social teachings but are well outside the usual advocacy positions for prominent pro-life groups. Along with the differences in political ideas, the “culture of life” narrative is distinct in that it gives a sacred moral imperative to change a culture as a whole, not just its laws.

Responsible Sexuality

The view that abortion violates moral law on the grounds that it defies the rightful place of sex as within a marriage and open to procreation is, while not entirely limited to religiously orthodox individuals, certainly the most persuasive and frequently discussed in religious contexts. Perhaps the most prominent example of this claim is Pope John Paul II’s encyclical, *Evangelium Vitae*, which has been deeply influential on the pro-life

movement, especially its Catholic members and organizations. Although the entirety of *Evangelium Vitae* is devoted to traditionally pro-life issues (including the death penalty and in-vitro fertilization), the following passage demonstrates multiple appeals to the strands of moral law identified in this chapter:

Certainly, from the moral point of view contraception and abortion are specifically different evils: the former contradicts the full truth of the sexual act as the proper expression of conjugal love, while the latter destroys the life of a human being; the former is opposed to the virtue of chastity in marriage, the latter is opposed to the virtue of justice and directly violates the divine commandment "You shall not kill." But despite their differences of nature and moral gravity, contraception and abortion are often closely connected, as fruits of the same tree. It is true that in many cases contraception and even abortion are practised under the pressure of real-life difficulties, which nonetheless can never exonerate from striving to observe God's law fully. Still, in very many other instances such practices are rooted in a hedonistic mentality unwilling to accept responsibility in matters of sexuality, and they imply a self-centered concept of freedom, which regards procreation as an obstacle to personal fulfilment.²⁵

John Paul II attributes the moral "evils" of contraception to a perversion of the intended uses of sexual intercourse, while the "evils" of abortion come primarily from ignoring the inherent worth of the conceptus. However, in the second paragraph above, he ties the two together, claiming that both contraception and abortion often come from an unwillingness to "accept responsibility in matters of sexuality." This latter idea is very common and compelling to many individuals who have no Catholic affiliation and perhaps do not even identify as pro-life.

A frequent argument against abortion is that it's a way of escaping responsibility for the "consequences" of a person's decision to have sex (this argument is rarely used in regards to pregnancy resulting from rape). Since women, not the men who impregnated them, receive abortions, it is most often those women who are blamed for this perceived irresponsibility and desire for consequence-free sex, although a man who assists in an abortion can also be subject to this criticism. The General Board of American Baptist Churches' resolution on abortion includes the following: "we oppose abortion as a means of avoiding responsibility for conception, as a primary means of birth control, without regard for the far-reaching consequences of the act... We denounce irresponsible sexual behavior and acts of violence that contribute to the large number of abortions each year."²⁶ The website for Live Action, a prominent pro-life organization, which is not religiously affiliated (though its founder is Catholic), advances this argument: "If you feel you are responsible enough to have sex, you should also be responsible enough to know that there is the possibility you will get pregnant... That's why consenting to sex really amounts to consenting to the possibility of pregnancy. It's not some punishment from pro-lifers, but rather an acceptance of how our reproductive systems work."²⁷ The group Priests For Life is explicit in condemning same-sex parenting, in-vitro fertilization, and abortion as defiant of the "natural order" of things: "conception should be restricted to the married couple, which is a man and woman, who are both living and who are both of a natural age of procreation... It is the right of every unborn child and of every infant to have two parents of different sexes who are an adequate age to deal with the demands of the child's development."²⁸

Some recent, publicized examples of this narrative include a Texas state legislator who, after introducing a bill that would charge women and abortion providers with murder for receiving or performing an abortion, defended the proposal by claiming in a 2017 interview with the *Texas Observer* that it would “‘force’ women to be ‘more personally responsible’ with sex.”²⁹ A Virginia state legislator, in a 2012 interview with *Slate*, recalled a conversation with one of his colleagues who defended a law requiring transvaginal ultrasounds prior to an abortion by claiming that women had already consented to being “vaginally penetrated when they got pregnant.”³⁰ In 2003, Dr. W. David Hager, a member of an F.D.A. advisory committee tasked with assessing the possibility of providing emergency contraception over the counter told the *New York Times* that ease of access to emergency contraception would promote irresponsible sexuality: “What we heard today was frequently about individuals who did not want to take responsibility for their actions and wanted a medication to relieve those consequences.”³¹ Though that quote is more than a decade old, it is particularly poignant given the close relationship between narratives on abortion and emergency contraception, a dynamic that will be further explored in Chapter Six.

This appeal to sexual responsibility is not a thing of the past. Its resonance extends far beyond its (somewhat limited) use in the media. This is an argument that I have heard given by friends, coworkers, family members, and strangers far more often than I have seen it in the press. Although I have chosen to include the narrative on sexual responsibility as a part of the section on moral law, the moral groundwork for the idea is often murky and is not always clearly a part of this category of moral thinking. While the Vatican’s denunciation of sexual irresponsibility is almost certainly predicated on a belief

in divine, universal moral law, many of the people and organizations who advance this claim may do so for other reasons and with other justifications. However, there is common thread of belief in a link between sexual behavior and the necessary potential for “consequences” of that behavior that motivates my inclusion of the sexual responsibility narrative in this section, even if I acknowledge that this thread is sometimes a fragile one.

The abortion-as-sexual-irresponsibility argument depends on two main premises: that consensual sex involves an implicit consent for the possibility of pregnancy as a “consequence” of intercourse, and that an abortion removes the consequences by removing the pregnancy. An additional, implied premise is that there is something morally suspect or outright immoral about avoiding or undoing the consequences of consensual sex (abortion undoes the consequence that is pregnancy and avoids the consequence that is childbirth); therein lies the “irresponsibility.” The claim that pregnancy should be a “consequence” for sex suggests that, even if it is not apparent to the person making the argument, the irresponsibility narrative often depends on a tacit acceptance of moral law regulating the role of sexuality and its procreative purposes. The fact that women are the most frequent targets of this irresponsibility critique additionally recalls the argument of abortion as a violation of women’s role as mothers. In conjunction with this narrative, motherhood is both natural role and punishment for transgressions against moral law.

Women and Motherhood

The relationship between abortion and motherhood significantly predates the contemporary abortion debate. In Chapter Two, there was discussion of the role of declining white Protestant birth rates in the 19th century panic around abortion, including

a number of quotes from anti-abortion spokesmen regarding the immorality of women abandoning their duties as mothers. In Chapter Three, we saw early-20th-century feminists such as Elizabeth Cady Stanton remarking on the problem of women being forced into motherhood by “sensually selfish” husbands and attributing abortion to the problem of forced motherhood. In Chapter Four, feminists who were aligned with the abortion rights movement argued for legalized abortion partially on the grounds that women should not be reduced to their reproductive capabilities. Each of these moments in history contain a variety of other motivating variables—nativism, economic concerns, professional disputes in the medical profession—that make the claim that women ought to be mothers irreducible to belief in a universal moral precept that essentializes women as mothers. However, that idea has always been present as an undercurrent of the debate, and the frequency of its explicit use in arguments about abortion has waxed and waned but never completely disappeared.

A section on abortion and women-as-mothers would be incomplete without reference to Kristin Luker’s seminal text, *Abortion & The Politics of Motherhood*. Though I have used parts of Luker’s argument in earlier chapters, her assessment of the relationship between pro-life and pro-choice women, published in 1985, is perhaps dated in a way that her historical work is not. However, it still merits discussion in this chapter. Luker argues that, up until the late 20th century, “the previous rounds of the abortion debate in America were merely echoes of the issue as the nineteenth century defined it: a debate about the medical profession’s right to make life-and death decisions.”³² However, the more recent abortion debate (as of 1985) centers on the moral status of the conceptus, and in doing so “focuses on the relative rights of women and embryos.” She argues that

this clashing of rights has in turn become a debate about women's obligations, both to themselves and to others, and that "this round of the abortion debate" is especially heated "*because it is a referendum on the place and meaning of motherhood*" [emphasis original]. Luker's research shows that by 1974, over 80% of pro-choice and pro-life activists in California were women and cites a national survey featuring similar results.³³ Given the overwhelming predominance of women in pro-x activism, she divides those in the abortion debate into "feminists" and "housewives," each representing a different view of motherhood. Luker argues, based on the results of her study, that pro-life women are, on average, less educated, less affluent, and more religious than pro-choice women and that they are less likely to be a part of the workforce. For Luker, the less-educated, pro-life housewife has more to gain than to lose from support of an issue that values the social primacy of women's reproductive roles. Since their resources lie in traditional gender roles, the reinforced importance of those roles— including women's role as mothers—is affirming.³⁴ However, working women who have access to the "male" resources of education and earning power are much less interested in a legal and social system which values primarily their traditional roles as homemakers and mothers.

Once an embryo is defined as a child and an abortion as the death of a person, almost everything else in a woman's life must "go on hold" during the course of her pregnancy: any attempt to gain "male" resources such as a job, an education, or other skills must be subordinated to her uniquely female responsibility of serving the needs of this newly conceived person. Thus, when personhood is bestowed on the embryo, women's nonreproductive roles are made secondary to their reproductive roles. The act of conception therefore creates a pregnant woman rather than a woman who is pregnant; it creates a woman whose life, in cases where roles or values clash, is defined by the fact that she is—or may become—pregnant.³⁵

Luker argues that women who have educational and financial resources want pregnancy to be a private choice, while women without those resources want motherhood to be seen

as “the most important thing a woman can do.” The debate rests, she claims, on the question of whether women’s reproductive capabilities should be socially recognized “as a resource or a handicap.”³⁶ Luker’s findings that the distinction between pro-choice and pro-life women is one of education and occupation are no longer accurate. Ziad Munson’s 2008 text, *The Making of Pro-Life Activists*, directly compares Luker’s study to more recent studies and reveals that, even as of 1992, the percentage of male pro-life activists (not just believers) had risen astronomically, making men the majority of the pro-life movement.³⁷ This obsolesces Luker’s estimation of the woman-driven pro-x debate, but we can still take seriously the conflict between pro-life affirmations of traditional motherhood and pro-choice critiques of traditional gender roles as an important part of the debate, even if they do not entirely encapsulate either position.

A January 2019 Fox News opinion piece written by Lila Rose, the founder of Live Action, compares the March for Life to the Women’s March in terms of their valuation of motherhood: “The first march – the March for Life – values the entirety of a woman, including her entire biology and her ability to be a mother, and doesn’t put her at odds with the children she holds in her womb. The Women’s March, on the other hand, specifically advocates the idea that legalized, unrestricted abortion is necessary to achieve ‘collective liberation’ for women.”³⁸ Although Live Action and Fox News are not religiously affiliated, much of the discourse around the natural, essential role of women as mothers is located in religious contexts. The Catholic Education Resource Center calls abortion “an attack on women as women – those uniquely endowed with the ability to bear children.”³⁹ The Vatican has not been as explicit in saying that women’s essential role is motherhood—this would not take into account the role of nuns and other

consecrated, celibate women in the Church—but Pope Francis’ April 2015 catechesis was a reminder of the Church’s position on sexual difference and gender roles.⁴⁰ The Pope criticized “so-called gender theory” and spoke on the importance of men and women maintaining distinct and “complementary” roles in order to create and maintain families.

Ambivalent Sexism

A 2016 multi-study longitudinal examination by Yanshu Huang et. al builds on previous studies, which had found a correlation between attitudes on gender roles and attitudes on abortion.⁴¹ Huang et. al contribute by incorporating Ambivalent Sexism Theory, which separates gender role attitudes into the complementary ideologies of “hostile sexism” (punishment of women who violate gender norms) and “benevolent sexism” (idealization of women who conform to gender norms). While benevolent sexism, or putting women “on a pedestal,” is less likely to be directly labeled as sexism because of its appearance as celebratory and positive of women, those who practice benevolent sexism (but not hostile sexism) are more likely to oppose both “elective” and “traumatic” abortions (those that involve health complications, rape, or incest), while those who ascribe to primarily hostile sexism are more likely to oppose only “elective” abortions.⁴² The article’s authors connect the more extensive opposition to abortion associated with benevolent sexism with a “reverence toward motherhood,” which rewards women for fulfilling expectations of motherhood even when their lives or mental health are at risk.⁴³ In the conclusion, the authors reveal that, “our results suggest that ambivalent sexism *precedes* abortion attitudes (rather than vice versa). This offers some of the strongest evidence to date that ideologies *influence* policy positions” [emphasis original].⁴⁴ While it is not my intent to accuse members of the pro-life movement of

sexism, this multi-study longitudinal examination is a critical piece for connecting the causal relationships between attitudes toward motherhood and attitudes toward abortion. If it is the case that idealization of motherhood roles precedes attitudes on abortion, then there is a stronger case to be made that a belief in the natural role of women as mothers is a moral grounding for anti-abortion attitudes—this article rejects the application of the “pro-life” label as a useful measure for discussing abortion beliefs—rather than simply two correlated belief systems with, perhaps, a common cause (although, the discovery of a causal connection between the two does not dismiss the possibility of an additional common cause, such as religion).

The differentiation between “elective” and “traumatic” abortions could perhaps be rightfully labeled a category mistake, but it is revealing in regards to the way that abortion is currently perceived and the similarities in historical abortion discourse. Chapter Two showed the difference in 19th century attitudes toward the poor, unmarried, “desperate” woman seeking an abortion versus the married, financially stable woman. In many ways, the AMA campaign to ban abortion in the mid-19th century was a reaction to the newfound frequency with which the latter class was seeking abortions. As Massachusetts congressman and physician Augustus Gardner wrote in 1892, “We can forgive the poor, deluded girl—seduced, betrayed, abandoned—who, in her wild frenzy, destroys the mute evidence of her guilt. We have only sympathy and sorrow for her. But for the married shirk, who disregards her divinely ordained duty, we have nothing but contempt.”⁴⁵ The quintessential desperate woman of 1892 was not always pregnant by means of rape or incest, nor was the desperation of her pregnancy the result of life-threatening medical conditions. As attitudes toward pregnancy and women have changed,

so has the meaning of what constitutes a “traumatic” pregnancy. But the distinction between the allowable abortion and the duty-shirking abortion highlights the implication that the essential subject of distinction in many pro-life abortion attitudes relies more on expectations of idealized motherhood than it does on the inherent worth of the conceptus.

A May 2018 Gallup poll found that, in general, 45% of Americans support abortion in the first trimester “when the woman does not want the child for any reason.”⁴⁶ This number drops to 20% when the theoretical abortion takes place during the third trimester. However, “when the pregnancy was caused by rape or incest,” 77% of Americans support abortion in the first trimester, with the number only dropping to 52% for a third-trimester abortion. As demonstrated by the first statistic, Americans, both pro-choice and pro-life—48% of the Gallup poll participants identified as pro-life, 48% as pro-choice, and 4% as neither—are broadly unsupportive of abortion after the “point of viability,” generally considered to be at the end of the second trimester. However, over half of the participants supported a third-trimester abortion in the case of rape or incest, even if there are no health risks to the mother or the conceptus. This phenomenon is also common in the case of self-identified pro-life politicians, many of whom support legalized abortion in the case rape, incest, or danger to the health or life of the mother. Though there are an overwhelming number of examples of this position, a good case study might be the views of the 2016 Republican Presidential primary candidates. All of the major contenders for the nomination identified themselves as pro-life and supported substantial restrictions on legal abortion. However, they were divided in terms of support for legal abortion in cases of rape and incest. Donald Trump, Jeb Bush, Carly Fiorina, Chris Christie, Lindsey Graham, and John Kasich supported abortion restrictions with

exceptions in the case of pregnancies due to rape and incest.⁴⁷ Ted Cruz, Marco Rubio, Ben Carson, and Mike Huckabee did not support exceptions for rape and incest.⁴⁸ Rand Paul was not clear about his stance on the issue.⁴⁹

One of the things that this division in support for “elective” abortions and “traumatic” abortions demonstrates is the relative lack of power of a moral law that dictates the inherent worth of all conceptuses. While it is true that some pro-life advocates and politicians refuse exceptions in the case of traumatic pregnancies, support for those exceptions is an extremely common position, so much so that Jeb Bush went on the record saying that Marco Rubio would have a difficult time winning the nomination if he did not alter his “no exceptions” position on abortion.⁵⁰ If a conceptus has inherent moral worth and dignity that makes it a universal wrong to end its life, then it does not logically follow that there would be an exception to that rule in the case of rape or incest, where, ostensibly, nothing about the moral status of the conceptus has changed, regardless of the traumatic situation. Plenty of pro-life organizations agree with the problems of this inconsistency, including the National Right to Life, Feminists for Life, and the Catholic Church.⁵¹ However, the more common American position is in favor of these exceptions, even past the point of viability. This signals that, while referencing the moral worth of the conceptus may be a strong rhetorical move, true support for that precept among pro-life Americans is uneven and complicated.

It also reveals that ideas about the essential necessity of motherhood still have much in common with those of the 19th and early 20th centuries. The idea that women are natural mothers who ought to fulfill their natural reproductive capacities by raising children is not, and has never been, equally applied to all women. The motherhood of the

desperate woman in 1870 was not something essential to protect and preserve since a single mother did not reinforce traditional values about the dutiful wife in a nuclear family. Nativist physicians were concerned about the women shirking their duties as mothers who were white, Anglo-Saxon Protestants; there was little celebration of the immigrant and Catholic women (the two groups often overlapped) who were highly attentive to their role as mothers. The distinction made between “elective” and “traumatic” abortions also has strong ties to narratives of sexual responsibility. If a pregnancy is the result of consensual sex, it is expected that women (and sometimes men) will accept the “consequences,” and therefore should not be afforded an abortion. However, in cases of rape, the pregnant person has not violated moral laws on sexuality of their own volition, so, by the reasoning of the sexual responsibility narrative, they do not have a responsibility toward the conceptus-consequence.

For women who have received abortions, the women-as-mothers narrative both enforces and denies their motherhood. Signs and stickers bearing the phrase, “Abortion doesn’t make you unpregnant. It makes you the mother of a dead baby!” are relatively common, and even more common are pro-life websites referring to women who have received abortions as “the mother,” even after the termination of the pregnancy. However, there is very little attention paid to the statistic that the majority of abortions in the United States are procured by women who are already mothers; as of 2014 data, 59% of abortion patients had previously given birth.⁵² A common reason women give for seeking an abortion is the desire to maintain adequate support for the children already in their care. This complicates both the women-as-mothers narrative and the sexual responsibility narrative. One possible solution to this incongruity is a reimagining of the

women-as-mothers narrative as the women-as-wombs narrative. The argument in this case is not that women have a natural responsibility or an essential function to take care of a family; rather it is that they have a responsibility towards the implementation of their biological ability to reproduce. This is a common pro-choice argument against the pro-life movement—that pro-life messages reduce women to their reproductive functions and remove their agency. It is reductive to claim that this is true of the entire pro-life movement, but the criticism is not without evidence. In January 2019, Utah legislators introduced a bill on vital statistics that would change the state’s legal definition of “female” to “an individual with ovaries who is confirmed before or at birth to have external anatomical characteristics that appear to have the purpose of performing the natural reproductive function of providing eggs and receiving sperm from a male donor.”⁵³ The bill’s primary sponsor, Rep. Merrill Nelson is not a vocal pro-life legislator, but his position on the role of the family is consistent with those summarized above. From his campaign website: “Marriage is the natural human condition decreed by our creator for the conception and rearing of children and the propagation of our race.”⁵⁴ Nelson won his most recent election with 71.4% of the vote.⁵⁵

Reframing the essential motherhood argument in a way that changes the meaning of “mother” to include “a woman who gives birth” in addition to previously mentioned accounts of motherhood within a nuclear family also allows us to account for the pro-life support of adoption within the women-as-mothers narrative. Nearly every prominent pro-life organization is vocally supportive of adoption, especially as an alternative to abortion. Practically, this makes sense as an advocacy approach, offering an alternative to women who do not want to raise a child. It is also certainly not the case that all pro-

adoption, pro-life individuals or groups have strong feelings about gender roles or motherhood. But among those who do strongly support women's essentialized role as mothers and also strongly support adoption (I could not find any examples of groups that support the former but not the latter), a different meaning of "motherhood" helps to account for what might otherwise be an incongruity.



Stickers and signs using the language of motherhood and promoting adoption as an alternative to abortion 56,57,58

Rights-Based Argumentation

Although utilitarianism and moral law are under-acknowledged facets of the abortion debate, the most explicit clash has historically, and does currently, take place on the playing field of rights. Given the prominence of rights-based narratives and the direct, explicit appeals to rights-based ethics that pro-x activists have cultivated over the last

century, these forms of argument require the least explanation, although they are certainly worthy of a rich analysis.

Right to Life

The pro-life movement still aligns itself with the philosophical precepts of its predecessor, the right-to-life movement. Although the name changed with the shifting demographics of the 1980s, as explained in Chapter Four, the argument that the conceptus has a right to life is still the primary contention of the movement and is the one most explicitly called upon by pro-life activists. The argument (usually) is: A conceptus is a human person from the moment of fertilization; all human persons possess the right to life; therefore, all conceptuses possess the right to life. The “right to life” in this context is a negative right, the right to not be killed unjustly. While there are very few situations in which most pro-life activists would consider the killing of an “unborn” or “preborn” baby just, there are rare circumstances, such as when the life of the pregnant woman is in imminent danger, that even the Catholic Church considers to be a just cause for killing the conceptus.^k

The most prominent argument (both academically and in popular debate) against the right to life, as described above, is the criticism that the first premise begs the question of the conceptus having personhood. The debate over the moral status of the conceptus, most often called the “personhood debate,” is one of the most high profile disagreements in pro-x discussions. In defense of that first premise, a common argument is: If x is a human and is alive, then x is a person; a conceptus possesses unique, human

^k The Catholic Church frames this in terms of the Doctrine of Double Effect rather than claiming that any kind of “abortion” is morally acceptable. However, the killing of the conceptus as a double-effect byproduct of a life-saving surgery is nonetheless an induced death of what they understand to be a human life, so it is reasonable to use the word “killing” in this circumstance.

DNA from the moment of conception; a conceptus shows the biological traits of life from the moment of conception, including growth, the presence of living cells, homeostasis, etc.; therefore, a conceptus is a person from the time of conception. One common response to this questions the premise that all things that have human DNA and traits of life are necessarily “persons.” Another claims that there are degrees of moral status within personhood. Some arguments, both for and against, appeal to moral intuitions, claiming that the emotional reactions that people have towards conceptuses in various stages of viability are evidence of their personhood or lack thereof. It is well beyond the scope of my project to exhaustively present all the arguments for and against the personhood premise of the right to life argument. However, as explained in Chapter Four, this is one of the most significant sites of social and political engagement in the abortion debate.

Right to Bodily Autonomy

“Pro-choice” is, at its most explicit, an argument for the right to bodily autonomy, that is, to choose whether or not a pregnancy occurs within one’s body. It also encompasses two other rights argument, the right to gender equality and the right to physicians’ autonomy, which will be addressed below. It also includes vestiges of the *Roe*-affirmed right to privacy, though in contemporary debate, the latter is usually treated synonymously with bodily autonomy. The right to bodily autonomy is the grounds for some of the most famous bioethics literature on abortion, most notably Judith Jarvis Thomson’s paper, “A Defense of Abortion.”⁵⁹ It is also a prominent part of popular pro-

choice discourse, summarized in straightforward slogans such as, “My Body, My Choice.” The argument (usually) is: Every born person has a right to bodily autonomy (the “born” may be optional depending on the nuance of the argument); bodily autonomy includes the decision about whether or not to stay pregnant; therefore, every person has the right to decide whether or not to stay pregnant. At its core, the argument for the right to bodily autonomy does not make exceptions for late-term pregnancies past the point of viability. This has led to some debate over whether or not an argument on the grounds of bodily autonomy can account for the option of extracting a living, viable conceptus as an alternative to the right to abort that conceptus.

David Levin argues that the premise that a woman has the right to control her own body is not enough to defend that she has the right to kill the conceptus, only to remove it from her body. If the technology ever exists to incubate a conceptus of six weeks development, an argument of bodily autonomy would only go so far as to permit the living extraction of the six-week conceptus. This outcome, he concedes, depends on the availability of sufficient medical technology to keep the conceptus alive after extraction.⁶⁰ Boonin replies that this would, among other consequences, require someone (presumably the woman) to shoulder the cost of nine months of artificial gestation, which is likely to be exorbitantly expensive.⁶¹ Another possible response to Levin, which also rests on the grounds of bodily autonomy, is as follows: Every (born) person has a right to bodily autonomy; bodily autonomy includes the right to decide whether or not to stay pregnant; this right means that the patient has a right to either [this is an inclusive disjunction] an abortion or a live extraction; the right to bodily autonomy permits a patient to choose the safer of two procedures; at all stages of pregnancy, extraction of a

living conceptus is a more invasive and dangerous medical procedure than an abortion; therefore, a pregnant patient has the right to refuse an extraction, instead choosing an abortion. Since defending this argument is not the primary goal of this subsection, much less this chapter, I will not go further in supporting my extension of bodily autonomy. The intent here was to provide a possible alternative to Boonin's economically driven response to Levin, one that accounts for the physical violation of enforcing an unwanted caesarean section as a mandatory alternative to an abortion. As this example begins to demonstrate, the pro-choice argument for the right to bodily autonomy is just as open-ended as the pro-life argument for the right to life. This makes it rich ground for bioethical debates about its limitations, but it also impairs its immediate usefulness as a philosophical premise.

Right to Gender Equality

The argument that legal access to abortion is necessary to ensure the right to gender equality has been significant in the pro-choice movement since abortion became an interest of the women's liberation movement in the 1960s. Prior to that, similar arguments were made in defense of access to contraception (see Chapter Three). The argument (usually) is: People have the right to access education, employment, wealth, and other opportunities without gender-specific barriers to that access; women are disproportionately disadvantaged in those endeavors by unwanted pregnancies and parenthood; abortion access is critical to removing the gender-specific access barriers of unwanted pregnancy and parenthood; therefore, abortion access is necessary (but not sufficient) to achieve gender-equal access to the aforementioned opportunities. On their

website, NARAL includes the following in their description of the fight for abortion access:

The Supreme Court's landmark 1973 decision in *Roe v. Wade* that affirmed abortion as a constitutional right for all was supposed to be the beginning of the fight for women's equality and autonomy, not the end... When the right to abortion is endangered, the fundamental equality of women is threatened. A woman can never be equal if she is denied the basic right to make decisions for herself and her family.⁶²

This description of gender equality is intermingled with questions of autonomy in a way that implies that the latter is a necessary condition for the former (“a woman can never be equal if she is denied the basic right to make decisions for herself”). There is nothing inherently problematic in that connection, but it does help to demonstrate the ways that bodily autonomy and gender equality, two discrete arguments, become enmeshed in one another under the all-encompassing label of “pro-choice.” This is not merely an issue with NARAL's web content. This lack of distinction between different kinds of arguments, coupled with an unwillingness to demonstrate the connection or causal relationship between those arguments, is an embodiment of the philosophical quagmires of the pro-x debate, which will be further discussed below.

Right to Physicians' Autonomy

The excerpt from NARAL in the previous subsection also contains a reference to *Roe v. Wade* as “the beginning of the fight for women's equality and autonomy.” Firstly, it is factually incorrect that *Roe* was the origin point for the women's liberation movement, but it is of greater interest that NARAL (and the pro-choice movement as a whole) collectively reimagines the *Roe* decision as a judicial affirmation of women's equality and autonomy. To some extent, this is true. Under the Due Process clause of the

Fourteenth Amendment, the court decided that the right to privacy covered both a woman's right to end a pregnancy and a physician's right to practice freely. However, states were given the right to place limits on abortion access during and after the second trimester, and during the first trimester, abortions were "left to the medical judgment of the pregnant woman's attending physician."⁶³ Although the text of *Roe* may have affirmed that women sometimes have the right to end a pregnancy, the *de jure* impact of the ruling was to place abortion decisions firmly in the hands of physicians. The subsequent political battleground over when the government can limit abortions is a power struggle between physicians and the state; women were never given the right to induce an abortion without approval of a medical professional. As a result of this, seven states have laws that directly criminalize self-induced abortions, such as the one attempted by Anna Yocca, and many more have laws that indirectly allow for prosecution of women who attempt them.⁶⁴

Although physicians from the American Medical Association originated anti-abortion legislation in the United States, the AMA is supportive of its physicians practicing abortions today. In the 21st century, fewer regulations on abortion-providing physicians directly correlates to more freedom of access to abortion for women. So, it stands to reason that support for physician autonomy would be a substantive part of the pro-choice position. This is often typified in the slogan, "abortion should be between a woman and her doctor," which is frequently used to voice support for *Roe* and to contrast the role of physicians to the role of politicians, stating that the latter should not intrude on abortion decisions, which ought to be treated as private health care choices. The argument (usually) is: Abortion is an ordinary medical procedure; the state should not

place limits on physicians' practices of medicine unless it is a matter of regulating safety; abortions are a comparatively safe outpatient procedure; therefore, the government should not limit physicians' right to freely practice abortion. There is a noticeable similarity between this argument and the narrative of abortion-as-healthcare discussed toward the beginning of this chapter. Positioning abortion entirely as a healthcare decision has the advantage of leveraging physicians' collective professional authority in support of abortion access, but it carries the distinct disadvantage of tacitly agreeing that it should be physicians, not pregnant women, who have final say in matters of abortion. While this is acceptable (and even desired) for many pro-choice Americans, it carries the baggage of physicians' centuries-long opposition to abortion and concedes that the "choice" in pro-choice also includes the choices of physicians, regardless of their stance on abortion.

Philosophies in Conversation

Up to this point, I have discussed a few of the ways that pro-choice and pro-life arguments talk past one another, but this is symptomatic of the larger problem of philosophy in pro-x rhetoric. The design of pro-x terms makes it nearly impossible to have forthright, coherent philosophical discussion unless one is willing to untether their ideas from the umbrella labels of "pro-life" and "pro-choice." I've divided this concern into two points:

- 1) The number of arguments implied in the very wording of "pro-life" and "pro-choice" give rise to rampant fallacies of equivocation and composition.

- 2) The condensing of different moral frameworks into a single pro-x term makes the necessary metaethical conversations extremely difficult.

Composition and Equivocation

The logical fallacy of equivocation occurs when the double (or triple, or otherwise multiple) meaning of a word results in it being used in different ways within an argument, without the speaker distinguishing between those meanings. The fallacy of composition occurs when a speaker claims that a trait that is true of one or more parts of a whole must be true for the whole in its entirety.

Both “pro-life” and “pro-choice” contain a number of different philosophical positions that are not just associated with their pro-x label— they are internal to the meaning of the word itself. “Pro-life” contains support for a right to life from conception, but it also contains the position that the life of a conceptus has worth as a matter of moral law and the belief in a “culture of life.” Neither of the first two arguments depend on the other (though one could argue that the culture of life depends on an intrinsic worth of human life); they are independently and simultaneously constitutive of the term “pro-life.” This is not to say that everyone who identifies as pro-life believes all three of these arguments to be true; the term has different meanings in different contexts, but that is not frequently addressed by commentators and advocates. “Pro-life” and “pro-choice” are both routinely treated as monolithic entities, so it is easy to equivocate between distinct arguments. This problem is equally present in the term “pro-choice,” which is constituted of arguments for: the right to bodily autonomy, the right to gender equality, and the right to physicians’ free practice of medicine. As with the constitutive arguments of “pro-life,”

each of these arguments has a self-contained argument for “choice” and a different contextual meaning of “choice” within that argument.

The fallacy of composition often occurs when someone attacks the entirety of a pro-x position based on a disagreement with one or more of its parts. Compositional arguments are often used to attack politicians for “hypocrisy” if they support one component of a pro-x definition but not another. For example, self-identified pro-life politicians are frequently criticized for opposing legal access to abortion on the grounds of the conceptus’ right to life but supporting the death penalty. Since the right-to-life argument implies (under most iterations) that someone cannot be killed unjustly, one would have to show that the death penalty is an unjust killing in order to support that claim of hypocrisy. More commonly however, the argument of hypocrisy is based on a meaning of “pro-life” that is derived from the inherent worth of human life or support for a culture of life. By those arguments alone, someone who supports the death penalty would not be pro-life. However, since the philosophical meaning of “pro-life” consists of three independent arguments, a disagreement with one or two of those arguments does not constitute a disagreement with the whole. That pro-x terms lend themselves to problems of composition is not something that can be fixed through better education or more open discussion. Words that make meaning in the way that pro-x terms do—through multiple, independently constitutive arguments—are very interesting to philosophers but entirely unsuited to public debate, especially one that is already so complicated internal to the arguments themselves.

My exclusion of other pro-choice arguments, such as the public health narrative, in my definition of the term “pro-choice” is intentional. In addition to the core arguments

that constitute the philosophical definition of “pro-choice,” there are supporting arguments that align with pro-choice values but are not actually constitutive of the word itself. The argument for legal abortion on public health grounds is one of those. Imagine that Person A does not believe in the right to bodily autonomy, gender equality, or physicians’ free practice, but does believe that abortion should be legal so as to prevent deaths from unsafe abortions (this is not too different from the positions of some of the abortion reform advocates of the 1960s). In one sense, it would not be reasonable to call Person A “pro-choice” since there is nothing contained in the argument for public health that depends on the belief in any definition of “choice.” Yet, many people *would* refer to Person A as “pro-choice” since a secondary definition of the term is “belief in legal access to abortion,” even if that belief has absolutely nothing to do with “choice.”

This gets even more complicated when there is an active disdain for “choice.” Let us imagine Person B, who, like Person A, does not believe in “choice” but does support legal abortion. In addition to supporting all women having the ability to legally access abortion, Person B (similar to some eugenicists of the early 20th century) believes that certain populations should be forcibly compelled to get abortions, perhaps unconditionally or perhaps as a condition for receiving benefits such as public housing. In addition, doctors are not permitted to object to the performance of this procedure. Is this person “pro-choice”? Certainly NARAL and PPAF would condemn their beliefs, but whether or not the average American would consider them “pro-choice” is difficult to discern. For many, belief in legal access to abortion is not only a necessary but a sufficient condition for being “pro-choice,” even if the person is opposed to all the constitutive meanings of the philosophical definition of “pro-choice” and actively

opposes women's (and physicians') choices in reproductive decisions. In this way, the secondary definition of "pro-choice" can actively contradict what I consider to be its philosophical definition (which already consists of multiple, independent arguments). Since there is little public recognition of the multiplicity or the complexity of the philosophical definition, it is easy to default to the secondary definition.

Though I will not repeat the thought experiment in its entirety, the same scenario can be played out with the term "pro-life." One of its supporting (but not constitutive) arguments, such as the role of women as mothers, could be used in opposition to the philosophical definition of "pro-life" but not its secondary definition of "opposed to legal access to abortion." A Person C who believes that conceptuses are inhuman blobs deserving of no rights or consideration might still oppose legal access to abortion if they, for whatever reason, wish for women to have compulsory childbirth. Would this person be "pro-life"? Perhaps not to the Vatican or to the NRLC, but, as with Person B, many Americans might look solely to their political beliefs on the legal status of abortion as an arbiter of whether they are "pro-life." Both the pro-choice and pro-life examples demonstrate the problem of equivocation at play in the pro-x debate. There are two different definitions to each pro-x term. The first is a multiplicitous containment of different philosophical arguments involving "choice" and "life," respectively. The second definition rests entirely on the legal status of the abortion. This distinction is rarely recognized, perhaps since it takes quite a bit of work to compile a set of arguments for the philosophical definitions of either pro-x term. But the use of "pro-choice" interchangeably with "legal abortion" and "pro-life" interchangeably with "no legal abortion" erases the arguments that are critical to the existence of meaning in "choice" or

“life.” Otherwise, the terms “pro-legal abortion” and “pro-abortion bans” make more sense (since we cannot realistically expect any group to willingly trade a “pro-” label for an “anti-” label). To complicate matters further, the secondary definitions are themselves a multiplicity, albeit not inherently philosophical ones. As demonstrated by multiple polls throughout this project, there is no agreement on whether a “pro-life” legal stance allows for exceptions in the case of rape or whether a “pro-choice” legal stance can still oppose third-trimester abortions.

These experiments have not interrogated how Persons A, B, or C might identify themselves in regards to abortion. Absent the specifics of the thought experiment, this is a topic for later discussion. One of the most common problems of pro-x equivocation is the interchangeable use of “pro-life” or “pro-choice” as an identity term and as a label for certain policy ideas. Since this equivocation does not involve the misuse of moral philosophy, it will be addressed separately, in Chapter Six.

The Erasure of Metaethics

A second philosophical problem, separate from the issues involved in defining pro-x terms, is that the bundling of multiple discrete moral frameworks (utilitarianism, moral law, rights, etc.) under a single term makes it difficult to have necessary metaethical discussions about which of those frameworks to prefer in a given scenario. It is accepted in academic philosophy that answering an argument based on a deontological premise with an argument based on a utilitarian premise is useless and incoherent unless accompanied by an argument as to why one should preference utilitarianism over deontology in the given scenario (or in general). This is perhaps a simplistic account of

metaethics, but even this much consideration is lacking from most abortion debates occurring outside academia. The pro-x binary—which is itself a single system, although it includes two sides—presupposes that any argument advocating for a particular position or view on abortion is either pro-life or pro-choice and that the two are symmetrically opposed to one another; that is, if an argument is pro-choice, it will be able to critically engage with a related pro-life argument, and vice-versa.

In January 2019, the state of New York passed a bill removing abortion from the criminal code and placing it in its health code. The new legislation states that abortion is permitted if “the patient is within 24 weeks from the commencement of pregnancy, or there is an absence of fetal viability, or the abortion is necessary to protect the patient's life or health.”⁶⁵ Pro-life organizations have, unsurprisingly, had a negative response to news of the passage of the Reproductive Health Act. Lila Rose, President of Live Action, issued a statement saying, “Convicted criminals aren’t subjected to the death penalty in New York state, but now children up until the ninth month of pregnancy can be given lethal injections and poisoned to death. This is no different than infanticide.”⁶⁶ This statement, and the many similar statements given by pro-life activists in the wake of the bill’s passage, is a fairly straightforward argument that third-trimester abortions are immoral on the grounds that a) the conceptus is a human child and b) killing children is wrong. This is an argument from moral law—killing a child is always wrong. Pro-choice activists and writers responding to this almost invariably answer by saying that third trimester abortions are exceedingly rare, expensive, and usually done in cases where the conceptus would not survive for long after birth.⁶⁷ This, while true information, does not actually engage with the pro-life argument, which holds a categorical moral opposition to

the abortion of a conceptus, regardless of its likelihood of surviving after birth. If the pro-choice writer further explains their position, it is often an argument that abortion in the case of fetal inviability allows a pregnant woman to save her future child from a short, bleak life filled with excruciating pain. At this point, this is a relatively straightforward utilitarian argument. The pro-life argument here says that a third-trimester abortion is always wrong, regardless of circumstance. The pro-choice argument here says that a third-trimester abortion is not always wrong if it helps to alleviate a great amount of suffering. Neither argument is actually equipped to engage with the other—this is the necessity of metaethics. Without recognition that one of these is a deontological argument and the other is a utilitarian argument, there is no opportunity for either side to make a case for the primacy of their moral framework over the other, and the debate can only flounder, with both people left angry that the other just “doesn’t get it.”

Without any education in philosophy, a person might not have the conceptual toolbox to label something as “deontological,” regardless of the existence of the pro-x binary. However, most reasonable people could probably identify that these two arguments are talking past one another, even without giving a formal name to the kind of arguments at play. The existence of the pro-x binary challenges this ability by claiming one argument as “the pro-life side” and the other as “the pro-choice side.” And, since it is a basic tenet of the binary that pro-life and pro-choice are neatly opposing sides, these two arguments carry the pretense that they are symmetrical and can engage with one another. Sometimes the respective authors believe that they are having a good faith argument, other times they do not. Either way, once each side of an argument is understood by its *readers* to be one side of the pro-x binary, the question of which moral

framework we should consider (even if the reader is not conceptualizing it in those exact terms) is re-categorized as a question of which pro-x approach the reader prefers.

Conclusion

I have divided some of the most predominant moral philosophies undergirding pro-x rhetorics into categories of frameworks in order to better identify two problems that the pro-x binary poses for the consideration of moral philosophy in the abortion debate. The first is a problem of the definitions of each word—“pro-choice” and “pro-life”—and how the multiplicitous nature of the philosophical definition and the presence of a second, purely legal definition transform each term into a minefield of potential logical fallacies. This is a particularly difficult challenge to unravel since the adoptions of “pro-life” and “pro-choice” in the late 1970s both fulfilled the purpose of bringing a number of dissimilar groups with distinct moral philosophies, religious backgrounds, and legal goals into a unifying movement. In order to accomplish that task, both pro-x terms are ambiguous and multiplicitous by nature. The movements are most unified in their respective legal goals, which neither term actually refers to. Even then, neither term (or movement) is agreed in the boundaries of its political ambitions. The second problem is a fallacy brought about by the binary itself. The Introduction deals more explicitly with the false dichotomy of “pro-life or pro-choice,” but this chapter looks at one of the consequences that ensues from that line of thinking: the erasure or subsumption of other frameworks and categories into the pro-x binary, specifically the diversion from metaethics. This is a problem of the structure of the binary more so than the definitions of the words themselves, though I do not take it for granted that it would even be possible to

disentangle the pro-x terms from a binary system or that that would be a desirable outcome.

Chapter Six builds on the philosophical problems articulated here and explores a new concept, “equivocal standards,” which is a useful tool for understanding other kinds of philosophical-rhetorical problems in the abortion debate, even when they do not necessarily fall within the pro-x binary. This conceptual tool is an essential part of the future trajectory of this project as it provides a format for those interested in the problems of abortion discourse to uncover logical discrepancies outside of the examples covered explicitly in this project. Chapter Six also re-approaches the idea of identity as it manifests within the pro-x binary.

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CHAPTER VI: EQUIVOCAL STANDARDS AND IDENTITIES

Chapter Five explored the moral frameworks that inform the meanings of “pro-choice” and “pro-life” and the submerged assumptions that are often not immediately apparent in their conventional usage. The two central philosophical problems of the pro-x binary that I examined in Chapter Five are intrinsic to the way the pro-x binary is structured; they are a part of its very form. The problems and obstacles developed in this chapter are seeded around, under, and within the abortion debate. In this chapter, I first move to frame elements of the pro-x binary through a new term, “equivocal standards.” This is a concept which has applicability far outside the topic of abortion and that does not permeate all of (or even the majority of) the abortion debate. In this way, it is very different from the problems I explain in Chapter Five. However, it is an important framing mechanism for understanding the implications of the small fallacies and miscommunications in our rhetorical-philosophical toolbox that contribute to the overabundance of problems in the abortion debate. Second, I expand on abortion-adjacent concepts, such as pregnancy and conception, which are affected by the binary. As discussed in previous chapters, abortion has historically had close but sometimes fraught relationships with birth control, with social ideas of womanhood, and with the medical establishment. This chapter examines those connections as they manifest in the present day. I end the chapter with an analysis of pro-x terms as a form of identity, shedding light on the way that pro-x terms used as identity markers serve to further confound discussions of abortion among individuals and in politics.

Equivocal Standards

Choice

“Choice” is the most conspicuous example of what I will call an *equivocal standard*. An equivocal standard is a term that is a critical part of a metric to determine the morality of an action, but one that is broadly used in a fallaciously equivocated manner, whether intentional or unintentional. The use of equivocal standards form a condition for the possibility of a pro-x binary and are one of the central causes of the binary’s failure as a useful tool for public discourse. As I have described, the valuation of “choice” is a common metric for moral judgments about abortion, but “choice” can refer to women’s bodily autonomy, the free practice of physicians, gender equality, or just legal abortion access. “Pro-choice” used as a catch-all term to weigh the merits of a position on abortion risks the conflation of one or more of these distinct positions. This opens the door to another set of fallacies— division and composition—which are worthy of exploration in another project and will not be explicitly discussed here. But the multiplicitous meaning of “pro-choice” (and this also applies to “pro-life”) lends itself to equivocation, specifically equivocation in an idea that would be used to judge the morality of a position or action. Take the following argument: “NARAL Pro-Choice America ought to support a piece of proposed legislation only if it is pro-choice. The bill in question would require doctors to prescribe mifepristone and misoprostol [the two drugs used in medical abortions] to any woman who requests them, provided her pregnancy has not progressed past 10 weeks. This limits doctors’ freedom to make decisions about abortion without state intervention; so, this law is not pro-choice. Therefore, NARAL should not support this bill.” Here, “pro-choice” is a standard for

whether or not a bill deserves an organization's support. It is fair to label it as a kind of moral benchmark. The equivocation occurs when "pro-choice" is used to mean "supportive of doctors' right to make abortion decisions without state intervention." But if another constitutive meaning of "pro-choice" were applied, such as "supportive of the right to bodily autonomy," then this legislation would indeed be pro-choice and the argument would have a different conclusion. One of the problems of the co-constitutive definitions of "pro-choice" (and "pro-life") is that it is not obvious whether each definition is independently a necessary or a sufficient condition for its pro-x explanandum. If each definition is a sufficient condition for a thing to be called "pro-choice" or "pro-life," then the argument above is a clear example of equivocal standards. If each one is necessary, but not sufficient—and all three definitions are jointly sufficient—to call a thing "pro-choice," then the argument above is less a problem of equivocation and more an example of a simple misuse of a word. However, as I argued in Chapter Five, the way pro-x terms are used in common discourse suggests that each constitutive definition is independently sufficient to label a thing as "pro-choice" or "pro-life," even if it does not capture the full philosophical definition of the pro-x term in question. Given this, the problem of the argument given above (and the many similar arguments abundant in contemporary abortion discourse) would be one of an equivocal standard.

Human Life

A second, common equivocal standard in the abortion debate is the term "human life." Most pro-life activists argue that a conceptus possesses unique human DNA from

the very beginning of a pregnancy, and it meets all the biological qualifications for a living thing (growth, cellular reproduction, functional activity, etc.); therefore, a conceptus is always a human life. That is a foundational premise in a number of arguments, including the argument that abortion is murder, because abortion deliberately ends a human life, and deliberately ending a human life is murder (except in cases of self-defense or war). The criterion of human-ness is a familiar moral standard in a number of areas of moral thought, including the abortion debate. The equivocal nature of that standard, when used in many abortion-related arguments, comes from two directions. The first is the fact that “human” is regularly used to mean “person.”

So, by arguing that a conceptus is a human, pro-life activists mean to entail that it is necessarily a person and so subject to the moral considerations afforded by possession of personhood. However, the association between personhood and humanity relies on certain character traits of humans (rationality, sentience, social participation, and legal standing, although one could argue that the latter begs the question in the case of fetal personhood) that go well beyond the simple possession of human DNA. So “human” can mean a) “an entity that possesses the DNA type specific to *homo sapiens*” and it can mean b) “an entity that possesses personhood.” An argument that relies on “human life” to make the case for the immorality of abortion and that does so by showing that a conceptus meets the requirements for (a) while using a second premise that implies (b) such as “ending a human life is murder” is an argument that has committed the fallacy of equivocation and which specifically utilizes “human life” as its equivocal standard.

The second way in which “human life” acts as an equivocal standard is through the dual meaning of “life.” The mechanics of this equivocation play out nearly identically

to the case described above, with the difference being that the criterion or standard for moral consideration is one of “life,” where “life” could mean either the biological traits that equally apply to a bacterium such as a metabolism and reactions to stimuli, or some cultural or philosophical standard for life, especially human life, that is not reducible to functions such as metabolism and movement. Since the second “definition” is not, in fact, a definition but rather a large cluster of definitions spanning the globe over millennia, this particular equivocal standard can be more difficult to parse apart when identified in an argument. Still, it uses the same method as the “human” standard: taking a rigid biological definition of a morally significant term and using that biological definition to imply a different definition which bears greater moral consequence. The “human life” debate is also a prime example of metaethical erasure in abortion discourse. Since one meaning of “human life” is associated with pro-life language and the other with pro-choice language, it is often extremely difficult to have a discussion about the relative merits of each definition and their value in moral judgments without the accusation or assumption that an argument for one or the other is merely evidence of the speaker adhering to one pro-x “side” or the other.

Health and Life of the Mother

Another example of an equivocal standard are the phrases “health of the mother” or “life of the mother.” The equivocal nature of the former is more commonly recognized, but Celeste Michelle Condit describes the way in which “life of the mother” contains multiple meanings which are rarely differentiated when using it as a metric for moral evaluation of an abortion: in terms of public policy, “*mother’s life* had to cover so many women, it could only be reduced to the common denominator of [the mother’s]

physical survival. However, the women’s [interview subjects’] version of the term *my life* meant identity—the ‘everything I was.’”¹ In this way, arguments for the relative moral legitimacy of an abortion that is intended to save the life of the mother often rely on the knowledge that many people will assume the “mother’s life” to be a purely physical determination when in fact it may mean something very different to the woman, her family, and her physician. This at first appears to be a less plausible example of an equivocal standard since most people today do understand “mother’s life” to be a physical determination unless otherwise specified. However, this term, along with “health of the mother” has a vitally important role in the solidification of equivocal standards as the basis of modern abortion discourse. For a century, physicians were given license to perform “therapeutic abortions” when abortion was otherwise illegal. The designation of an abortion as “therapeutic” was both a legal and moral benchmark for determining the legitimacy of the procedure. Yet, as I discuss in Chapter Three, physicians were often given a great amount of autonomy to determine what constituted a therapeutic basis for an abortion. This was not simply a matter of poorly defined terms. The American Medical Association crafted model legislation with the knowledge that “therapeutic” in a medical context would be understood by many to refer to the physically curative needs of a patient. However, physicians and their patients seeking abortions frequently interpreted emotional, psychological, and economic factors as warranting “therapeutic” relief through abortion. The vestiges of this standard are apparent in laws such as New York’s Reproductive Health Act of 2019, which expands legal abortion after 24 weeks to include situations where “abortion is necessary to protect the patient’s life or health.”² Although the patient’s life was already legal grounds for an abortion after 24 weeks, the addition of

“health” came with no definitions or qualifications for what constitutes the patient’s health.

The identification of equivocal standards in abortion discourse is essential for recognizing the many small linguistic inconsistencies that form the foundation for the pro-x binary. It is important that not every fallacious equivocation in the abortion debate is an *equivocal standard*. Equivocations such the one between the double meaning of “fetus” as both “the stage of a conceptus starting in the ninth week of pregnancy” and “the dispassionate alternative to ‘unborn baby’ in all stages of pregnancy” are significant in their own way—in this case, it feeds a particular narrative of pro-choice as being aligned with reason and science rather than emotion or religion—however, neither use of “fetus” represents a premise in a moral argument that would be significantly altered with the use of the alternative definition.¹ The meaning of “fetus” does not, in most circumstances, represent a standard for determining the morality (and/or subsequent legality) of an abortion-related decision. However, equivocal standards, which do perform that function, compromise the coherence and legitimacy of moral benchmarks on both sides of the pro-x binary and also outside, in between, and beyond that binary. A conversation on the moral acceptability of a 36-week abortion to preserve the health of the mother does not, at face value, necessitate the use of a pro-x binary structure. However, when “health” is undefined, the conversation participants will likely move to a

¹ One could certainly argue that the latter definition of “fetus” is used as an embedded premise in an argument that the conceptus does not have the same moral worth as a born human. However, it is more plausible that the use of “fetus” in this way is meant to conjure a mental image that evokes (or revokes) particular emotions and so conditions a mindset which will be more receptive to an argument about the non-personhood of the conceptus.

discussion of what constitutes health.^m Incumbent to that discussion is the question of whether anyone other than the provider (and perhaps the patient) should be endeavoring to define “health” at all— its lack of definition in contexts such as New York’s Reproductive Health Act carries the implicit argument that health care providersⁿ ought to have the freedom of practice that allows them to make that determination on their own, in accordance with the standards of practice determined by members of their own field. So, the old equivocal standard of “therapeutic abortions” supports the physician-practice meaning of “pro-choice,” which, used as a sufficient condition for “pro-choice,” translates into a narrative of: “therapeutic abortions paved the way for *Roe v. Wade*, which is pro-choice, and therefore is a source of pro-choice ideology.” This multiplicitous pro-choice ideology, if it can even properly be called an “ideology,” then supports the equivocal standard of “patient’s health” in a contemporary law. It is important that we understand the middle section of this causal chain as pro-choice and not just as an argument for physicians’ autonomy of practice. The equivocal standard of “patient’s health” draws from both of the other constitutive meanings of “pro-choice,” as evidenced in the text of the bill, which states that, “The legislature finds that comprehensive reproductive health care is a fundamental component of every individual’s health, privacy and equality” and that “every individual who becomes pregnant has the fundamental right to choose to carry the pregnancy to term, to give birth to a child, or to have an abortion.”³ The status of “patient’s health” as an equivocal standard in this

^m If “health” were defined in this bill, there are a number of ways in which that definition may still (and likely would) participate in historical discourses associated with the pro-x movements; however, I will not be discussing those hypotheticals.

ⁿ It is also worth note that the Reproductive Health Act adds the language of “health care practitioner” when describing who may perform an abortion. This is a departure from the usual legal language of “physicians,” which opens the door to abortion practice by a number of other kinds of licensed medical professionals. [S240 (New York 2019), 42-43. <<https://legislation.nysenate.gov/pdf/bills/2019/S240>>]

legislation depends on a pro-choice framework insofar as it presents itself as fully compliant with and derived from the full philosophical definition of “pro-choice.” Although it separately acknowledges each of the constitutive definitions that I provided in Chapter Five, it (for politically obvious reasons) does not use the word “pro-choice.” Still, its pro-choice essence is embedded into the language and meaning of the text. To challenge the equivocal standard of “patient’s health,” one would have to challenge the full weight of “pro-choice.” And yet, “pro-choice” is only possible as an idea, used implicitly or explicitly, because of the equivocal standards that it evokes by nature of its multiplicitous meanings. And these meanings are in turn reliant on a number of other equivocal standards—such as the equivocation between legal and social equality, or the equivocation in “therapeutic” abortions. The significance of these equivocal standards is that they reveal that the philosophical problems of the pro-x binary are not limited to their existence in the binary; they constitute it and are perpetuated by it. It is not one fallacy but an entire framework of fallacies that allow for the existence of pro-x and which ensure its continued existence.

Conception

Another deeply significant equivocal standard is “conception” since the demarcation of the beginning of a pregnancy is closely tied to our understanding of abortion. Different meanings of “conception” lead to different understandings of what constitutes an abortion, an ontological determination that is central to any discussion of abortion’s moral or legal value. During the 2018 confirmation hearings of Supreme Court Justice Brett Kavanaugh, Senator Kamala Harris posted a clip of the nominee seemingly referring to certain kinds of birth control as “abortion-inducing drugs.”⁴ Although

Kavanaugh was not referencing his own beliefs, the clip gained massive traction on social media and was used as a rallying point for elected Democrats and reproductive rights groups to claim that Kavanaugh was in favor of reducing access to contraception (I received an email about the clip from my Democratic congressman). Even if Kavanaugh himself does not hold the belief that some methods of contraception in fact cause abortion, this belief is not uncommon among pro-life groups and has been highlighted in Supreme Court cases such as *Priests for Life v. HHS* (the 2016 case that Kavanaugh was referencing) and *Burwell v. Hobby Lobby* (2014).⁵ The disagreement rests on a discrepancy in the meaning of “pregnancy.” Although groups such as The Guttmacher Institute and Planned Parenthood affirm that emergency contraception only prevents pregnancy rather than terminating it, this relies on a definition of pregnancy as beginning at implantation, rather than fertilization.

Defining Pregnancy

The American College of Obstetrics and Gynecologists (ACOG) defines a pregnancy as “established only at the conclusion of implantation of a fertilized egg.”⁶ The U.S. Code of Federal Regulations defines pregnancy as “[encompassing] the period of time from implantation until delivery.”⁷ However, the same code defines a fetus as “the product of conception from implantation until delivery,” which differs from scientific differentiations between an embryo and a fetus (see the Introduction). The definition of pregnancy also varies by state, with some states, such as Kentucky, holding multiple, competing definitions in their statutes. In Kentucky statutes governing fetal assault,

pregnancy is considered to begin at “conception,” while statutes governing abortion define pregnancy as beginning at implantation.⁸

A 2011 study published in the *American Journal of Obstetrics and Gynecology* shows that, based on a stratified, random sample of 1800 U.S. obstetrician-gynecologists (OB-GYNs), 57% believe that pregnancy begins at conception, 28% believe that it begins at implantation, and 16% are “unsure.”⁹ This suggests that the majority of U.S. doctors specializing in pregnancy disagree with the ACOG definition of pregnancy as beginning at implantation. When a professional medical association meant to represent its constituent physicians is in disagreement with those constituents, it is difficult to soundly determine which side can be said to represent the beliefs of the community. It is also worth noting that the options given to the surveyed physicians were “conception” and “implantation” rather than “fertilization” and “implantation.” The word “conception” is often used to mean “the beginning of a pregnancy,” and so the choice of that term as opposed to the more medically-neutral “fertilization” could imply some bias in the survey. (The logical and rhetorical problems with the word “conception” will be discussed later in this chapter.) Obstetric textbooks and medical dictionaries are similarly divided on the beginning of pregnancy, with some claiming pregnancy begins at implantation and others claiming that it begins at conception, or sometimes synonymously with the latter, at fertilization.¹⁰ With the discrepancies in state and federal laws, the disagreements among OB-GYNs and their organizations, and the explicit politicization of the definitions, the definition of “pregnancy” is hardly a settled matter. The link between the battle to define “pregnancy” and the fraughtness of “abortion” is a clear one, especially when they intersect in discussions of “abortifacients.” The

controversy surrounding Kavanaugh's comments brings renewed attention to the long debate over whether or not certain Intrauterine Devices (IUDs) and emergency contraception can cause abortion. The two categories of IUD available in the United States are the copper IUD and the levonorgestrel IUD (often referred to as the "hormonal IUD"). With the levonorgestrel IUD, "the primary contraceptive effect... is to prevent fertilization via thickening of the cervical mucus, inhibition of sperm mobility and ovum transport. In addition, the [levonorgestrel] acts locally in the endometrium where the hormonally responsive endometrial glands undergo atrophic changes that limit their proliferative ability."¹¹ The atrophication of the endometrium makes implantation nearly impossible and so works as a sort of secondary contraceptive action; if the thickened cervical mucus and limited transportation of the reproductive cells do not prevent fertilization, the thinned endometrium will prevent implantation of the blastocyst (the multicellular stage of the conceptus, following the zygote). It is due to this ability to prevent implantation after fertilization that the levonorgestrel IUD is sometimes labeled an "abortifacient"—a substance that causes an abortion—by those who believe that pregnancy begins at fertilization. Organizations and think tanks that support emergency contraceptives and IUDs, such as the Guttmacher Institute, often use the phrase "the scientific community" to support claims that arguments about the beginning of pregnancy are a matter of science versus religion, with the former supporting the position of pregnancy-at-implantation.¹² However, what constitutes the "scientific community" is hardly itself a settled matter. Within the community of American OB-GYNs, it seems as though much of the confusion about scientific consensus can be attributed to a reliance on the equivocal standard of "conception."

Moments of Conception

While some laws, medical writings, and philosophical texts define “conception” as the initial union of sperm and ovum, others define it as the moment of implantation or simply, the beginning of a pregnancy. Others do not define it at all. In the *U.C. Davis Law Review*, Philip J. Peters Jr. argues that one of the fundamental ambiguities present in the use of “conception” as a legal term is the reliance on an idea of the “moment” of conception, rather than conception as a process. Peters argues that there is no singular moment in which conception happens; it is a roughly forty-eight hour event in which “the haploid genomes of the sperm and egg gradually and precisely transform into the functioning diploid genome of a new human embryo.”¹³ Peters’ conclusion is that any laws (e.g. some state laws on fetal homicide and embryonic research) that are triggered by “conception” should be interpreted as being triggered by the completion of conception. Prior to the beginning of the embryonic genome functioning, “a new human life is *being* conceived, but has not yet *been* conceived.”¹⁴ He also notes that while “fertilization” and “conception” are often used synonymously, it would be more precise to use the former to refer to the insemination of an ovum and the latter to refer to the point at which a new diploid life has been created. Peters’ article brings a new, scientifically-based approach to the question of when human life begins, but, more pertinently for the subject at hand, it also challenges the idea that “conception” ought to be used in any of the ways it is commonly employed today. Although Peters does not discuss abortion at any length, his argument can cogently be extended to say that the imprecise, overuse of “conception” has further muddled discussion of abortion and

contraception, especially within the subject of potentially abortifacient IUDs and emergency contraception.

This equivocation between meanings of “conception” is often unintentional and inexplicit. In the study from the *American Journal of Obstetrics and Gynecology* that I discuss above, the use of “conception” as one of the three options on the survey is an example of such a phenomenon. While I cannot know the intentions of the researchers, it is entirely possible that they used “conception” instead of “fertilization” believing that it was so commonly understood to mean the latter that it would not cause any confusion. The juxtaposition of “conception” against “implantation” suggests that it was, at the very least, meant to be read that way, with “conception” as a synonym for “fertilization.” In fact, they address both of these concerns in the “Comments” section of the article:

Our results must be interpreted with caution. To begin, we anticipated that physicians would understand “conception” to mean fertilization, which is arguably the predominant definition in medical literature. Yet, there are some investigators (ACOG for instance) who define conception as implantation. We expected that respondents understood the survey question, because conception and implantation were offered side by side as alternate responses and because our results are similar to other surveys (as described earlier), but this nevertheless represents a potential limitation of our data.¹⁵

Despite this, and despite the fact that the article’s authors frequently use “fertilization” rather than “conception” in other parts of the article, there is no indication that the survey itself contained any discussion of this nuance. Additionally, they never provide a reason for having chosen the language of “conception” over the more precise “fertilization” (they even acknowledge that some respondents may have selected “unsure” since they might believe “conception” to be synonymous with “implantation.”) They are correct that

this compromises the results of their study, and it also demonstrates an equivocal standard at work.

While the authors of the study are right that “conception” is frequently used to mean “fertilization,” its primary (or at least equivalently used) meaning is “the beginning of a pregnancy,” which is then sometimes modified by the aforementioned variety of opinions on where that pregnancy begins. So, when a survey asks, “Which of the following statements comes closest to your beliefs about when pregnancy begins?” and one of the three available answers is commonly understood to mean both “fertilization” and “the beginning of a pregnancy,” the survey has performed an equivocation. The double meaning of “conception” and the lack of acknowledgement (in the survey itself) of that double meaning by those who crafted the question would likely prompt some respondents to choose “conception” as their answer since, with one of its common definitions, it creates a tautology and thus is indisputably correct. There may be those who argue that a survey question is not an argument and so would not be at risk of a fallacy of equivocation. However, the survey results are premises in an argument about the opinions of American OB-GYNs. That argument is the subject of the article in question. An argument that is partially premised on an unacknowledged double meaning is certainly guilty of fallacious equivocation. The study also found that those who indicated that they objected to abortion were less likely to state that pregnancy begins at implantation than those who did not indicate an opposition to abortion.¹⁶

I have chosen to focus so strongly on this particular study because it demonstrates two things that are indispensable to my argument: (a) there is no “settled” definition of the beginning of pregnancy in the U.S. medical community, which is significant in an

analysis of the termination of pregnancies, and (b) the murky and fallacious use of terms in the abortion debate goes far beyond the problems of “life” and “choice.” Definitions of terms like “conception” and “pregnancy” are a part of the polarizing cycles of contemporary abortion rhetoric. I have been highly critical of this study, but I do not believe that its methodological problems make its conclusion of (a) any less plausible. Although the study’s authors placed their margin of error at approximately 3%, we could significantly expand that margin and still conclude that American OB-GYNs (and by extension, the relevant “scientific community”) are divided on the question of where pregnancy begins. This is one of a number of issues that are part of a self-reproducing cycle with abortion rhetoric. A certain measure of when pregnancy begins determines what counts as an abortion and what counts as contraception. This, in turn, impacts what kinds of regulations are placed on those procedures or devices. But, as revealed in the AJOG study, those who object to abortion are less likely to indicate that they believe pregnancy begins at implantation. Whether this correlation is a matter of common cause (such as religion) or whether one belief has a direct causal link to the other is dependent on the individual. In either case, these adjacent issues demonstrate that even a rhetorical reframing of the abortion debate may not be enough to disentangle the web of related issues which feed into the divisiveness of the topic.

Identity and Legality

While topics such as contraception and pregnancy form a network of ideas supporting and surrounding the core issues of the pro-x binary, the equivocation between pro-x terms as policy ideas and as identity terms form a different kind of problem—one in which the

words “pro-choice” and “pro-life” employ different meanings with the result of individuals incorporating legal or moral positions on abortion into their identities and imposing that identity position onto others. As I noted in the Introduction, pro-x identities are a critical point of tension in the abortion debate. “Pro-choice” and “pro-life” can be used to describe policy positions, political goals, and the stated viewpoints of individuals. While it’s much easier for the former two to make sense within a pro-x label, the latter does not easily cohere to the pro-x framework, and it becomes even more complicated when pro-x terms are used as identity markers, which is a pervasive phenomenon. Rather than saying “I support pro-choice policies,” people who talk about abortion most frequently employ pro-x terms as an aspect of their identity: “I am pro-choice” or “I am pro-life” or even, “I am both pro-choice and pro-life.” The framing differences in these two kinds of statements are important. When pro-x terms become identity labels, they carry a particularly personal weight that makes their ineffectiveness as descriptors more painfully intimate and confusing to those who see themselves—not just their policy alignments—reflected in neither half of a binary.

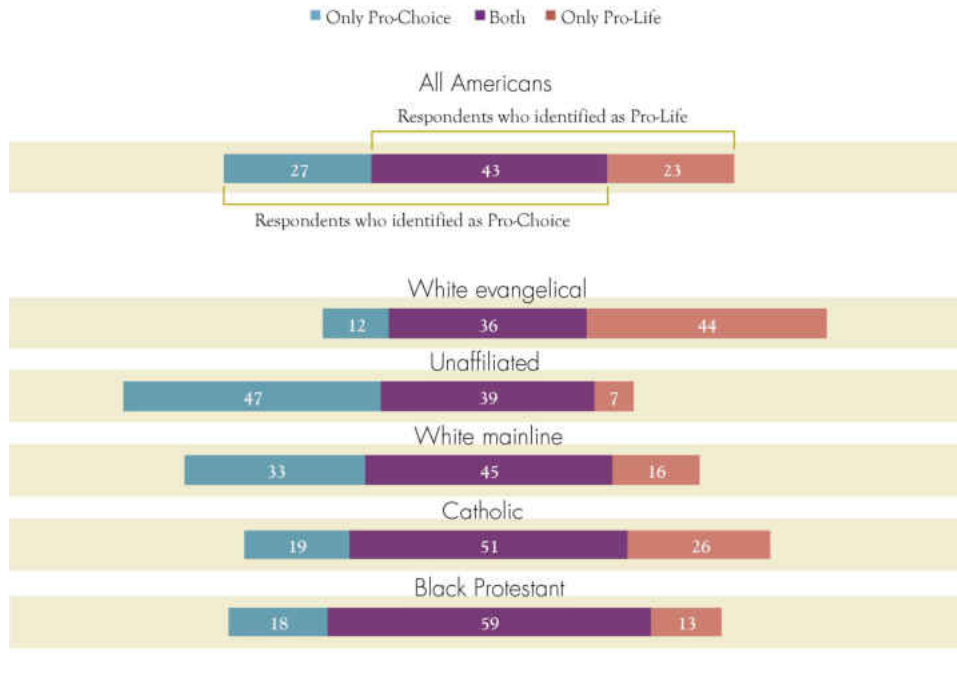
Below, I’ve included a chart from the Public Religion Research Institute, showing the “overlapping identities” of pro-choice and pro-life among Americans.¹⁷ Among all the surveyed religious groups, with the exception of white evangelicals and the not-religiously-affiliated, the plurality or majority of respondents identified as both pro-choice and pro-life. Even though this is a common position among Americans, it is often met by skepticism and ridicule from those who do identify as solely pro-life or pro-choice. When John Kerry ran for President of the United States in 2004, he gave an interview to Iowa’s *Telegraph Herald* in which he expressed this viewpoint: "I oppose

abortion, personally. I don't like abortion. I believe life does begin at conception. But I can't take my Catholic belief, my article of faith, and legislate it on a Protestant or a Jew or an atheist . . . who doesn't share it. We have separation of church and state in the United States of America."¹⁸ This was met with criticism from both pro-life and pro-choice groups, but primarily the former. The *National Catholic Register* responded that “In fact, Catholics' opposition to abortion doesn't flow from our unique beliefs about revelation but from the natural law. We believe abortion is wrong because killing is wrong—not because the Church says so.”¹⁹ The NRLC claimed that Kerry’s statement was “intended only to mislead voters” who were not familiar with his voting record on abortion.²⁰ The reason that pro-life groups took special umbrage at his statement is the same reason why it makes perfect sense that a person could be both pro-choice and pro-life: in common use, the former is a purely legal position whereas the latter is a moral position.

This way of slicing the meanings of pro-x terms is different from my previous approach, where I gave a full philosophical definition of each term alongside their commonly-understood legal counterparts. This is because the latter excavates the submerged meanings of the terms themselves, whereas the placement of “pro-choice” as a purely legal ideology is more accurate about the way people commonly intuit the essence of these terms, even if they do not capture the full historical and philosophical scope of their meaning. To be “pro-choice” connotes a belief in legal access to abortion, though the limits of that access will vary per individual. To be “pro-life” connotes a belief that abortion is morally wrong. Of course the pro-choice belief in legal access rests on a number of moral presuppositions, but those moral positions entail a belief in legal

access. So, pro-choice, at its core, is truly about the belief or disbelief in legal access. This is not the case for pro-life, where the moral belief that abortion is wrong does not necessarily entail the belief that it should be illegal. So, it is possible (and common) to hold a pro-life moral position that abortion is wrong while also believing that it should be legally accessible, which is a pro-choice position. This is consistent with our broader relationship between legality and morality. There are quite a few things that many Americans believe to be morally wrong but do not believe should be illegal (e.g., adultery, cruel or discriminatory speech, refusing to vaccinate one's child, or telling lies while not under oath, to name only a few). On the other side, there are far fewer actions that we believe are morally acceptable but which should be illegal (and most of these are for extremely utilitarian public health purposes, such as traffic violations and age limits for drinking). If it is both common and logical to be pro-life and pro-choice, this seems to be yet another piece of evidence that the pro-x binary, and even the terms themselves, are not broadly suitable as markers of individual belief or identity.

Pro-Choice/Pro-Life Overlapping Identities



Source: Public Religion Research Institute, Religion, Millennials, and Abortion Survey, June, 2011 (N=3,000).

Religion, Abortion, and Black History

This chart, though not focused explicitly on race, also points to some of the differences between black Protestants (who are, unfortunately, not distinguished between “mainline” and “evangelical” categories the way their white counterparts are) and white

Protestants.^o This difference should not be overlooked, as it reflects the ways in which racial politics and realities of the mid-century continue to inform positions on abortion today. People of color, especially black women, were historically targeted for sterilization and coerced abortions by eugenicist and population control movements, a fact that Rev. Jesse Jackson made note of when he originally opposed abortion legalization. The Black Panther Party opposed both legal abortion and birth control on the claim that they were part of a targeted effort to eliminate black persons prior to their birth, and the party expelled a well-known member, Donetta Brewer, for having an abortion in 1970.²¹ This stance also reflected the sometimes intense patriarchal and gender-essentialist leanings of the Black Panther Party, but, like Rev. Jackson, they had significant grounds for arguing that abortion legalization carried different political and historical weight for white women than it did for black women. Yet, black women's battle for control over their reproduction carries back centuries. Cottonroot, one of the abortion-inducing herbs made popular in pharmacies during the 19th century, was originally used by black slaves in order to end unwanted pregnancies.²² Black women's groups also played an active role in the birth control movement of the early 20th century, often employing a more egalitarian, community-focused approach than white women's groups.²³ Today, abortion is significantly more prevalent among black women than among white women or those of other races. In response to this, the contemporary pro-life movement frequently employs the language and ideas of abortion as a "black genocide," especially on billboards and in

^o The boundaries for what constitutes "evangelical" Christianity are often blurry, and that becomes even more so the case in black religious affiliations. The Pew Research Center claims that 17% of Black Americans are "Evangelical Protestant," while 53% are part of "Historically Black Protestant Churches, with only 4% a part of "Mainline Protestant" churches. However, the distinction between Evangelical Protestant and Historically Black Protestant is often a thin one, as nondenominational Christianity, Pentecostal churches, and Baptist churches feature prominently as subcategories in both. [Pew Research Center, "Views on Abortion, 1995-2018." <<http://www.pewforum.org/religious-landscape-study/racial-and-ethnic-composition/black/>>]

community outreach efforts. Some of these pro-life activists are black, although many are not.



Pro-life billboards targeting abortions among black women.^{24, 25}

The complicated history of slavery, eugenics, and the civil rights movement hold some explanatory power regarding Black Protestants' high proportion of identifying as both "pro-choice" and "pro-life." Black lives have been treated as disposable since before the foundation of the United States, and black evangelicals have a much greater focus on community well-being, oppression, and the dignity of human life (outside just the scope of abortion) than white evangelicals. While black evangelical communities have focused their attention on issues such as mass incarceration and food scarcity, white evangelicals

have moved toward abortion and LGBT identities as their social and legal foci.²⁶ Black evangelicals' interests in human worth and dignity align with "pro-life" descriptors, while their interest in community over individualism likely recognizes that black and poor women are disproportionately affected by legal restrictions on abortion. Much of my discussion of evangelicals in the abortion movement in Chapter Four would probably be better served by a qualification of those movements as "white evangelicals." However, I am limited by my source material, which overwhelmingly refers to "evangelicals" as a monolithic group, especially in relation to abortion. I am unwilling to make historical racial distinctions which are not substantiated beyond my own intuitions. Hopefully the nuance provided in this section will alleviate some of the problems of potential whitewashing without requiring irresponsible changes to the language of my previous analysis.

Conclusion

The common theme between equivocal standards, conception, pregnancy, and pro-x as a term of personal identification is that each of them stand at the periphery of the abortion debate and yet are crucial to both understanding and upholding the pro-x binary. While the concept of equivocal standards in itself has broad applicability to other topics and other areas of study, it is essential for many of the particular places of conversational incoherence and gridlock in the abortion debate, such as those mentioned above. The two primary problems inherent to the pro-x binary that I identified in the last chapter— the multiplicitous and ambiguous meanings of both pro-x terms and the binary's self-reproduction which excludes external forms of critiques and limits the use of

metaethics—are certainly not the only philosophical and logical problems with the structure of the pro-x binary, although I do believe they are the most central to its persistence and uselessness in popular rhetoric. My addition here of a third problem, equivocal standards, offers a method to identify and critique further rhetorical-philosophical problems in the abortion debate that are pertinent to, but not necessarily internal to, the logical problems of the structure itself. It will hopefully offer an entry point for others, both academic and non-academic, to classify and dissect the many philosophical problems of the abortion debate that I have not identified in my own project and some which have not yet emerged, but certainly will.

Notes to Chapter VI

¹ Celeste M. Condit, *Decoding Abortion Rhetoric: Communicating Social Change*. Urbana: Univ. of Illinois Press, 1990. 184.

² S240 (New York 2019), 48-49. <<https://legislation.nysenate.gov/pdf/bills/2019/S240>>

³ S240 (New York 2019), 30-32; 36-38.

⁴ Kamala Harris, Twitter, Sep. 7, 2018. <<https://twitter.com/SenKamalaHarris/status/1038136274593505280>>

⁵ “Supreme Court decision on Affordable Care Act contraception mandate,” *The Washington Post*, 2014. <<https://www.washingtonpost.com/apps/g/page/politics/supreme-court-decision-on-affordable-care-act-contraception-mandate/1131/>>; *Priests For Life v. HHS*, No. 13-5368 (D.C. Cir. 2014) <<https://law.justia.com/cases/federal/appellate-courts/cadc/13-5368/13-5368-2014-11-14.html>>

⁶ “Facts Are Important,” The American College of Obstetricians and Gynecologists, June 2014. <<https://www.acog.org/-/media/Departments/Government-Relations-and-Outreach/FactsAreImportantEC.pdf>>

⁷ 45 CFR § 46.202 - Definitions. U.S. Code of Federal Regulations. <<https://www.law.cornell.edu/cfr/text/45/46.202>>

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- ⁸ Rachel Benson Gold, “The Implications of Defining When a Woman is Pregnant,” *Guttmacher Policy Review* 8(2): May 2005. <<https://www.guttmacher.org/gpr/2005/05/implications-defining-when-woman-pregnant>>
- ⁹ Grace S. Chung, et. al, “Obstetrician-Gynecologists' Beliefs About When Pregnancy Begins,” *American Journal of Obstetrics and Gynecology*, 206(2): February 2012. <[https://www.ajog.org/article/S0002-9378\(11\)02223-X/fulltext](https://www.ajog.org/article/S0002-9378(11)02223-X/fulltext)>
- ¹⁰ Chung et. al.
- ¹¹ Natalie S. Whaley and Anne E. Burke, “Intrauterine Contraception,” *Women’s Health* 11(6): Nov. 2015. 759-767. <<http://journals.sagepub.com/doi/full/10.2217/whe.15.77>>
- ¹² Benson Gold
- ¹³ Philip G. Peters Jr., “The Ambiguous Meaning of Human Conception,” *U.C. Davis Law Review* 40(1): Nov. 2006. 199-200. <https://lawreview.law.ucdavis.edu/issues/40/1/essay/DavisVol40No1_Peters.pdf>
- ¹⁴ Peters Jr., 200.
- ¹⁵ Chung et. al.
- ¹⁶ Chung et. al.
- ¹⁷ Cristina Stanojevich, “Overlapping ‘Pro-Choice and ‘Pro-Life’ Identities,” Public Religion Research Institute, Jan. 28, 2013. <<https://www.prrri.org/spotlight/graphic-of-the-week-overlapping-pro-choice-and-pro-life-identities/>>
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CHAPTER VII: CONCLUSION

After reading a thorough critique, especially one of an existing social structure, one often expects (or hopes) to find some suggestion for resolution, an actionable way to improve the situation of the present. Although the arena of abortion politics is rife with suggestions for new slogans, new legislation, and new ways of presenting the old material, I offer none of that. I remain convinced that the problem of the pro-x binary is one which must be excavated before it can be rearranged. I have picked up the shovel from others before me, such as James Mohr, Leslie Reagan, Kristin Luker, and Kathy Rudy, but there is much more to be done before we might consider how to completely overhaul a very deeply entrenched way of knowing that is embedded into the American political consciousness. That is not to say that nothing can be done in the meantime. When it is performed or presented in the company of others, the analytic process can be effective at prompting listeners to question ideas which they had taken for granted. I have presented only a few examples of the equivocal standards that haunt the abortion debate; a reader might use this template to locate other examples when she hears them used in conversation. If that leads to participants of the conversation rethinking a small part of their assumptions about how abortion ought to be contemplated and argued, then something of significance will have been achieved.

Beyond a Binary

I will reiterate from Chapter Five that the pro-x binary is a single, not dual, system. We cannot remove the pro-x terms from their binary structure and attempt to preserve the former while abandoning the latter. If we were to ignore the logically precarious content

of the pro-x terms and focus exclusively on the problem of the false dichotomy in which they are presented, one might be tempted to preserve the terms “pro-choice” and “pro-life” within a different structure, such as a spectrum. As we have seen, both “pro-choice” and “pro-life” reference different kinds of beliefs, and those beliefs in turn have their own complexities that prevent them from being easily reduced to a “yes” or “no.” Referencing the legal component of pro-x views, this is especially obvious. The question, “do you support legal access to abortion?” makes little sense without qualification. It is possible to simply answer “no” (since some people do not support legal access to abortion under any circumstances), and it is possible to simply answer “yes” (some people support legal access to abortion without any qualifications, for the duration of the pregnancy). However, most Americans do not subscribe to either of those extremes, and so associating “pro-life” with “no” and “pro-choice” with “yes” is not an accurate reflection of the people who identify as pro-life or pro-choice. One answer to this is that we could place support for legal abortion on a spectrum, with “no legal abortion under any circumstances” on one end and “legal abortion under all circumstances” on the other end. But even this solution fails to account for much of the nuance in people’s beliefs, substantiated by differing allegiances to the diverse meanings of the pro-x terms. If someone believes that abortion is acceptable at any point in the pregnancy, but only in cases of economic or physical hardship, where do they fall on this spectrum as compared to a person who believes in abortion on demand up to 24 weeks and no legal abortions after that point? There is no clear way of creating a linear model that would be a satisfactory replacement of the binary.

It would be even more difficult to attempt to place philosophical adherence to the pro-x positions on any kind of spectrum. Many people believe in both the conceptus' right to life and the woman's right to bodily autonomy; the negotiation between those rights is often situational and context-dependent. Others believe that the conceptus has worth of some kind but that a woman has a right to bodily autonomy and a physician has a right to free practice (this is roughly the position that *Roe* takes). And some people, although involved in the abortion debate, subscribe to neither philosophical definition, such as Persons A, B, and C described in Chapter Five. The problem with the disconnect between our pro-x rhetorical system and its users is not that those who wish to discuss abortion are failing to take into account the full meanings of the terms (although better understanding of those terms as they exist would almost certainly produce a more intelligible discussion). The problem is that the pro-x binary is designed to be ambiguous, to appeal to many while conveying little about the beliefs of the user— whether that user is an organization or an individual.

Prioritizing History in Philosophy

In this project, I have addressed three main philosophical problems with the structure and content of the pro-x binary. In Chapter Five, I argued that 1) the multiplicitous meanings of “pro-choice” and “pro-life” are ambiguous by nature and give rise to rampant fallacies of equivocation; 2) the binary structure of the debate leads to the erasure of important metaethical discussions. In Chapter Six, I developed 3) the idea of the “equivocal standard,” which is prevalent in discussions within and adjacent to the abortion debate and has the dual effect of confounding discourse on ideas that frame abortion (such as the

meaning of pregnancy), making them easily manipulated for political or ideological ends; and serving as a perpetuating mechanism of the binary by creating a closed system in which terms that would help to clarify the moral stakes of an abortion-related policy or idea get redirected back to the pro-x binary for explanation of the term.

None of these philosophical problems could be properly developed without a historical analysis of their conditions of emergence. The historical component of this project is not a side note or merely interesting context; it is the foundation of the philosophical work, and it is intrinsic to the problems of the pro-x binary as they present today. The 19th century, analyzed in Chapter Two, established the standard of physicians' power over abortion decisions, a precedent that included the long-lasting standard of "therapeutic" abortions and formed one of the key components of the *Roe v. Wade* decision. As I have discussed, the language of *Roe* and the coalitions formed after its decision were integral to the emergence of pro-x factions and ultimately, the binary. In addition, *Roe*'s acknowledgment of the state's interest in fetal well-being and women's health, balanced with the (finite) right to bodily autonomy and physicians' free practice under the umbrella of "privacy" fundamentally altered the language and attention of groups both for and against legal abortion. The 19th century also presented one of the first substantial challenges to the Quickening Doctrine, leading to a centuries-long debate over the beginning of pregnancy and the beginning of human life. The former of these, as discussed above, has become an equivocal standard with significant consequences for debates around abortion and contraception, while the latter is both an equivocal standard and a central example of the problem of metaethical erasure.

Emerging in the 19th century and continuing well into the 20th century, the nativist movement, vocally concerned over the declining birth rates of white, Anglo-Saxon Protestant women, brought backlash to the early feminists who advocated for women's right to limit their family sizes. The resulting claims about the essential status of women as mothers carried through in certain interpretations of moral law that are embedded in pro-life thought today. Though they were not, as a group, proponents of legalized abortion, the early-20th-century feminist leaders who castigated husbands for forcing their wives into unwanted pregnancies began the movement to give women the option of limiting their family size. This argument, an early root of the argument for the right to bodily autonomy, progressed through the birth control movement and the formation of Planned Parenthood, eventually intersecting with the interests of eugenicists and population control advocates, which I have developed in Chapter Three. The alliances made between population control groups and women's rights groups were influential in the bipartisan nature of the abortion legalization movement, while the confluence of civil rights activists and Catholics created a bipartisan right-to-life movement. As both of these coalitions split apart and abortion access became a politically partisan issue, new labels were needed to accommodate the different motivations of the coalition members. "Right-to-life" was replaced by "pro-life," a term that acknowledged the alignment in evangelical and Catholic attitudes toward abortion and their unification in support of a Human Life Amendment while also acknowledging that many who were opposed to legalized abortion were not interested in moral arguments based on human rights. Those who supported the legal abortion access afforded by *Roe* were not previously united under a single name or term, but the adoption of "pro-choice" in the

late 1970s afforded a broad descriptor to advocates for physicians' choice, those who supported women's bodily autonomy, and a diverse group of others who supported legalized abortion for various reasons.

It was not a historical necessity that no other significant “pro” group emerged in the late 1970s— there might have been a “pro-states” group, for example, that supported reversing *Roe v. Wade* but imposing no federal restrictions of any kind on abortion access (as I describe in Chapter Four, this was the position of many individuals who opposed both *Roe* and the Human Life Amendment; however, they never formed any nationally significant movement). Any number of other abortion-related movements might have formed in the aftermath of *Roe v. Wade*, but they did not. Once the influential leaders of the pro-life movement coalesced around a Human Life Amendment (despite its members who disapproved), the pro-choice movement was in the position of playing political defense, which left little room for nuance or ambivalence in its public messaging. In this tense, and still continually escalating, arrangement of offense-and-defense, there became only two sides that mattered politically or socially. In the zero-sum game of political tug-of-war over TRAP [Targeted Regulation of Abortion Providers] laws, state protections for *Roe*, and heartbeat bills, a win for one side was a loss for the other. So, despite the variety of beliefs held under each respective pro-x umbrella, those different philosophies and ideologies could not engage in coherent debate while bound by the terms of the pro-x binary. Any attempt at metaethical thought about abortion would have to sever itself from the binary and from the pro-x terms, a task that proves difficult since much of our terminology around abortion lies in a minefield of equivocal standards and pro-x feedback loops, problems I dissect in Chapters Five and Six.

In this project, I have articulated a number of distinct philosophical problems with the pro-x binary in American abortion discourse and developed terms to allow more thorough discussion of these problems. I have also demonstrated how these problems, and the pro-x binary in which they are ingrained, are historically contingent. Moving forward in academic and popular discussions of abortion, a more rigorous understanding of the events, people, and institutions that have facilitated the terms and ideas that we take for granted will be key to unraveling our dependence on them as philosophical and rhetorical tools. It is of particular importance that we not just understand *that* there is historical precedent for our contemporary ways of understanding abortion, but that we also understand (at least some of) the specifics of that history and the weight of particular moments. Although this project, and any similar project, is necessarily non-exhaustive, I have dedicated a very significant amount of my philosophical project to historical work (although, as I have discussed, they are not separate entities) in order to shine light upon those specific moments which are so important for the emergence of the pro-x binary. For example, it is not enough to say that the popular slogan “abortion should be between a woman and her doctor” has roots in the medicalization of abortion in the 19th century. To appreciate the significance of that connection, one must be aware of the motivation of physicians in the 1860s, the campaigns of the American Medical Association, the benefits (and sometimes limitations) to physicians presented by the standard of “therapeutic abortions,” the public health framing of abortion legalization efforts, and the related change in position by the AMA prior to *Roe*. Beyond expanding our understanding of the situations of the present, this specific knowledge also provides valuable context for new developments, such as New York’s transition from physician-oriented language to

“health care practitioners,” a reversal of the AMA’s hard-fought battle to prevent midwives and other “irregulars” from performing abortions.

Certainly, the role of history in philosophy is in part to illuminate the paths that led to whatever contemporary practice is being analyzed. It is also vital to our ability to extract assumptions of necessity from those practices and contextualize meaning and discourse in a way that allows for deep, coherent conversations on topics like the pro-x binary. But, sometimes, doing history is what makes philosophy possible, not just what makes it better. When I began this project, I struggled to make sense of (what I would later call) the pro-x binary in terms of various epistemological theories and through formal logic. Some fragments of each still remain in the finished dissertation. But I struggled to make philosophical sense of the phenomenon I wanted to analyze until I started reading its history. The philosophical conclusions I reach in Chapters Five and Six emerged only after extensive review of the historical literature. The same is true of the term, “pro-x,” which became the title of the dissertation. It was not the case that history supplemented my philosophical work—it allowed for its very existence. I do not claim that this is, or should be, always the case in philosophy. But my own methods show at least an anecdotal example of the close ties between historical and philosophical practice.

Those who are paying attention to the abortion debate in the United States are already well aware that there is something not-quite-right, a series of miscommunications and incoherencies that prevent real, substantial conversation about an broadly important issue. But without analysis of the pro-x binary— how it functions, how it was formed, and the political and rhetorical tools that keep it in place—the think pieces and articles that decry the terms “pro-life” and “pro-choice” can do little more than ask for a shallow

transition in language that does nothing to challenge the underlying logics and submerged knowledges at the heart of the binary. What is needed is not a change in language alone; it is a widespread curiosity and skepticism among those who use the language of “pro-choice” and “pro-life,” a drive toward historical understanding of the obstacles barring the way to coherent discussion on abortion. I have provided a blueprint for research going forward, with the hope that others will continue to unravel the philosophical problems of pro-x through logic and history. The immediate project for those of us who are invested in American abortion rhetoric is not one of prompt transformation, but one of understanding.

APPENDIX: U.S. ABORTION TIMELINE

1776 The United States declares independence from Great Britain but retains much of their Common Law, including allowing abortion prior to quickening.

1803 The Parliament of the United Kingdom bans all abortion by “poison.” Pre-quickening abortions were included, although they carried a lesser sentence.

1812 *Commonwealth v. Bangs* in Massachusetts reaffirms the boundaries of quickening in the United States and the legality of pre-quickening abortions in the United States.

1821 Connecticut passes the first statutory abortion regulation in the U.S., banning the use of poison to induce abortions after quickening. The punishment is a life sentence.

1825 Missouri passes a law that forbids abortion by poison, but unlike Connecticut, it does not explicitly mention the Quickening Doctrine.

1827 Illinois passes a law similar to the one in Missouri, banning abortion by poison without reference to quickening.

1828 The United Kingdom strengthens its 1803 law by forbidding abortion with instruments, as well as the previous prohibition on poison.

1828 A New York law bans abortions as a whole (which can be interpreted to include pre-quickening abortions), makes the unauthorized practice of medicine a misdemeanor, and requires consultation with two physicians for a therapeutic abortion.

1834 Ohio legislators make attempted abortion a misdemeanor. There is no specified age of gestation. An abortion-related death of either the mother or the fetus after quickening becomes a felony.

1835 Missouri adds a ban on abortion by the use of instruments to its previous ban on abortion via poison.

1839 The first session of the Iowa territorial legislature includes a ban on abortion via poisoning.

1839 Mississippi assigns the sentence of second-degree manslaughter for abortion after quickening.

1840 Maine bans attempted abortions, specifying that the law applied regardless of gestational age.

1840 Ten out of the twenty-six states had passed some kind of statutory regulation on abortion. Of those states, five explicitly criminalized abortion only after quickening. The other sixteen states were still governed by the old common law.

1841 Madame Restell, the most famous abortion provider of the 19th century, is arrested for the first time for procuring abortion via poisoning and via instruments. She is found not guilty.

1842 “Sleeping Lucy,” a Vermont clairvoyant, opens a small abortion business that will expand for the next three decades.

1844 The *Boston Medical and Surgical Journal* notes that abortionists are operating freely and openly and that abortion is a profitable business.

1847 The American Medical Association is formed.

1857 The American Medical Association begins a campaign to criminalize abortion.

1869 The Catholic Church condemns abortion at any stage of pregnancy.

1873 President Ulysses S. Grant signs “An Act for Suppression of Trade in and Circulation of Obscene Literatures and Articles of Immoral Use,” also known as the Comstock Act.

1914 Margaret Sanger launches “The Woman Rebel,” and coins the term “birth control.”

1916 Margaret Sanger is arrested for opening the country’s first birth-control clinic in Brooklyn, the precursor to Planned Parenthood.

1930 Abortion is the official cause of death for 2,700 women, nearly one-fifth of all maternal deaths that year.

1930s The right-to-life movement begins to organize, primarily among Catholics.

1951 Sanger enlists scientist Gregory Pincus to develop a “magic pill,” which will become the first oral contraceptive.

1953 Alfred Kinsey’s revolutionary book, *Sexual Behavior in the Human Female*, reports that 9 out of 10 premarital pregnancies end in abortion, and 22 percent of all married women have abortions.

1960 The American Medical Association (AMA) argues that abortion bans are not enforceable.

1960 The American Law Institute (ALI) creates a model penal code that would soften abortion laws to allow more flexibility for physicians.

1962 Sherri Finkbine goes to Sweden to have a legal abortion after discovering her fetus was badly damaged by the drug thalidomide.

1962 Pat Maginnis forms the women's rights group Citizens for Humane Abortion Laws in California.

1962 Nearly 1,600 women are admitted to Harlem Hospital Center for incomplete abortions.

1964 Geraldine Santoro dies in a Connecticut motel after a botched abortion. The harrowing photo of her corpse is published by *Ms.* magazine in April 1973 and becomes a symbol of the movement for legalized abortion.

1965 The New York Times embraces abortion reform on its editorial page.

1965 Rubella outbreaks lead to increased abortions and galvanize physician support for reform.

1965 *Griswold v. Connecticut* rules that Connecticut's ban on contraception infringes on a fundamental right of privacy.

1966 The National Organization for Women (NOW) is founded.

1966 The Association to Repeal Abortion Laws in California is founded.

1967 Dr. Leon Belous is convicted for referring a woman to an illegal abortionist -- a case leading to a 1969 California Supreme Court decision in favor of the right to choose abortion.

1967 President Kennedy creates the Presidential Advisory Council on the Status of Women and calls for the repeal of abortion laws.

1967 The *Journal of the American Medical Association* advocates for abortion policy reform.

1967 21 New York ministers and rabbis found Clergy Consultation Service on Abortion, providing abortion referrals while abortion was illegal.

1967 National Organization for Women adds abortion rights to its demands.

1967 Colorado is the first state to liberalize its anti-abortion laws, allowing abortion in cases of rape, incest, fetal defects, or for mental-health reasons.

1967 Colorado, North Carolina, and California enact the ALI abortion reform law.

1968 A Los Angeles hospital admits 701 women with septic abortions this year, approximately one admission for every 14 deliveries.

1969 In *People v. Belous*, the California Supreme Court rules that women have a fundamental right to decide whether to have a child and to protect their health.

1969 The underground abortion provider network, Jane, is formed in Chicago.

1969 The National Conference on Abortion Laws forms the National Association for Repeal of Abortion Laws (NARAL).

1969 Redstockings, a radical feminist group in New York, holds an abortion speak-out.

1970 Hawaii is the first state to legalize abortion. New York repeals its law criminalizing abortion soon after.

1970 *Our Bodies, Ourselves*, written by the Boston Women's Health Book Collective, first published

1971 American Bar Association endorses abortion until the twentieth week of pregnancy.

1971 Dr. Jane Hodgson convicted for performing abortions in a hospital— the only doctor ever so convicted.

1971 The Comstock Act is repealed.

1971 The Feminist Women's Health Center is formed in Los Angeles; the group teaches women how to perform "menstrual extraction."

1973 *Roe v. Wade*, and its lesser-known companion case *Doe v. Bolton*, grant women the right to legal abortion up to the point of viability.

1973 In response to the *Roe* ruling, antiabortion activists create the National Right to Life Committee, the nation's largest and longest-running anti-abortion organization in the United States.

1973 NARAL changes its name to National Abortion Rights Action League. Religious Coalition for Abortion Rights founded.

1975 National Women's Health Network founded.

1976 The Hyde Amendment enacted, eliminating most federal funding for abortions, except "where the life of the mother would be endangered."

1976 First abortion clinic arson reported.

1980 The Republican Party platform drops its 40-year commitment to the Equal Rights Amendment and calls for the appointment of anti-abortion judges.

1980 Direct-action group Pro-Life Action League formed.

1982 Pennsylvania passes the Abortion Control Act, which imposes a 24-hour waiting period, requires married women to inform their husbands, and mandates parental consent for minors.

1983 National Black Women's Health Project is formed.

1984 At the United National Population Conference in Mexico City, the Reagan administration announces its "Mexico City policy," which bans U.S. family planning funds to overseas nongovernmental organizations that use their own funds for abortion.

1985 The Religious Coalition for Abortion Rights creates the Women of Color Partnership Program.

1987 Reproductive Health Technologies Project formed.

1987 Randall Terry performs his first "rescue" at a women's health facility where abortions are performed.

1988 Randall Terry founds Operation Rescue, one of the nation's leading abortion-protest organizations.

1989 *Webster v. Reproductive Health Services* upholds Missouri's abortion restrictions and inspires the states to experiment with further limitations.

1989 A teenager, Becky Bell, dies after procuring an illegal abortion to avoid her state's parental involvement law.

1989–1992 Over 700 abortion restrictions are considered in state legislatures throughout the U.S.

1990s Abortion clinic violence increases.

1991 Operation Rescue blockades clinics in Wichita, Kansas.

1992 National Network of Abortion Funds established to provide private funds for indigent women seeking abortion care.

1992 The March for Women's Lives brings 750,000 demonstrators to Washington, D.C. for women's reproductive rights.

1992 *Planned Parenthood v. Casey* upholds Pennsylvania restrictions on abortion and lowers the legal barriers to similar restrictions.

1993 NARAL changes its name to National Abortion and Reproductive Rights Action League.

1993 Dr. David Gunn, of Florida, becomes the first abortion provider to be murdered.

1993 The Hyde Amendment expands to offer abortion assistance in cases of rape and incest.

1993 On the twentieth anniversary of *Roe v. Wade*, President Clinton reverses five Reagan and Bush administration restrictions on abortion.

1994 Freedom of Access to Clinic Entrances (FACE) signed by President Clinton, limiting protest actions at abortion clinic entrances.

1994 Medical Students for Choice formed to address the declining practice of abortion medicine.

1995 Two abortion clinic employees, Shannon Lowney and Leanne Nichols, are murdered in Massachusetts.

1996 and **1997** President Clinton twice vetoes the Partial Birth Abortion Ban Act.

1998 In January, a nail bomb explodes outside a clinic in Birmingham, Alabama, killing a guard and maiming a nurse.

1998 James C. Kopp shoots Dr. Barnett Slepian, a Buffalo abortion doctor, through his kitchen window.

2000 In *Stenberg v. Carhart*, a Nebraska statute banning “partial-birth abortion” is ruled unconstitutional because it does not make an exemption for preserving the life of the mother. This ruling invalidates 29 other state laws.

2000 The FDA approves the abortion pill mifepristone (RU-486).

2001 President George W. Bush reinstates two abortion restrictions on his first day in office.

2002 President Bush signs the Born Alive Infants Protection Act, which establishes the right to life of a conceptus, when expelled from the body after a failed abortion, if it has a heartbeat, breath, pulsation of the umbilical cord, or voluntary muscle movement.

2003 The Supreme Court lets stand a lower court ruling against the Nuremberg Files website, which encouraged violence against abortion providers.

2003 President Bush signs the Partial Birth Abortion Ban.

2003 Paul Hill becomes the first anti-abortion extremist executed for his crime of murdering two clinic workers in Pensacola, Florida.

2004 President Bush signs the Unborn Victims of Violence Act, which allows two charges to be filed in the murder of a pregnant woman: one for the woman herself and one for the conceptus.

2005 In *K.L. v. Peru*, the U.N. Human Rights Committee establishes that denying a woman a therapeutic abortion constitutes cruel, inhuman, and degrading treatment.

2006 In March, South Dakota bans abortion in all cases except to save the life of the pregnant woman; voters overturn the ban in November.

2007 *Gonzales v. Planned Parenthood* upholds the federal Partial Birth Abortion Ban, despite not containing an exception for the health of the mother.

2007 New Hampshire becomes the first state in the nation to repeal its parental involvement law, which required the notification of the parents of minors who sought an abortion.

2009 Dr. George Tiller, one of the few U.S. providers of late-term abortions, is shot and killed while attending church in Wichita, Kansas.

2012 Arizona passes legislation banning abortion after 20 weeks except to save the life or health of the mother.

2012 A judge in Federal District Court denies a preliminary injunction against the Arizona abortion ban, requested by the Center for Reproductive Rights.

2013 In *Isaacson v. Horne*, the Ninth Circuit court rules the Arizona law unconstitutional on the grounds that it ignores *Roe*'s benchmark of the point of viability.

2013 Texas passes H.B. 2, which would require abortion providers to meet the same standards as an ambulatory surgical center, require doctors performing abortions to have admitting privileges at a nearby hospital, and to renovate their buildings to meet the standards of a hospital waiting room.

2013 The Pain Capable Unborn Child Protection Act, which would ban abortion 20 weeks after fertilization, passes the House of Representatives. It is not brought to a vote in the Senate.

2015 The Pain Capable Unborn Child Protection Act passes in the U.S. House of Representatives a second time. It fails to get enough votes in the Senate to bypass filibuster.

2015 The Arkansas legislature passes a law effectively banning abortion via medication.

2015 The Satanic Temples sues the state of Missouri, claiming that the 72-hour waiting period mandated before an abortion can be procured violates the religious liberty of their members.

2015 33-year-old Indiana woman Purvi Patel is sentenced to 20 years after self-aborting with medication she ordered online.

2015 31-year-old Tennessee woman Anna Yocca is charged with first-degree attempted murder for trying to self-abort with a coat hanger.

2015 Robert L. Dear Jr. opens fire at a Planned Parenthood in Colorado Springs, killing three and wounding nine. A self-described “warrior for the babies,” he is later found mentally incompetent and unfit to stand trial.

2015 A pro-life group produces a series of highly-edited “sting” videos at Planned Parenthood, raising a national conversation on the proper disposal of fetal tissue and sparking calls for the defunding of Planned Parenthood.

2016 The spread of the Zika virus, which causes birth defects, brings public attention to the difficulties facing many Zika-infected women who seek abortions.

2016 In *Whole Woman's Health v. Hellerstedt*, the Supreme Court strikes down Texas' H.B. 2, reaffirming that a state cannot place restrictions on the delivery of abortion services that create an undue burden for women seeking an abortion.

2016 The Oklahoma legislature passes a bill that classifies the performance of abortions as “unprofessional conduct” and would revoke the medical licenses as well as criminally prosecute any physicians found to have performed an abortion. Gov. Mary Fallin vetoes the bill.

2017 Republican Congressman Tim Murphy, a member of the House Pro-Life Caucus, resigns after it is revealed that he pressured his mistress to get an abortion.

2017 The Pain Capable Unborn Child Protection Act passes in the House of Representatives a third time. It fails to get enough votes in the Senate to bypass filibuster.

2017 Texas passes a law requiring that abortion providers bury or cremate all fetal remains.

2018 A federal judge strikes down the Texas law that requiring burial or cremation of fetal remains on the grounds that it imposes significant burdens on women seeking abortions.

2019 New York State passes the Reproductive Health Act of 2019.

2019 Kentucky passes a “heartbeat bill,” banning abortion once a conceptus’ heartbeat is detected, sometimes as early as six weeks into the pregnancy. A federal court temporarily blocks enforcement of the law.

2019 Mississippi passes a heartbeat bill. A federal judge strikes it down.

2019 Ohio passes a heartbeat bill. Unless blocked by a judge, it will be effective July 1, 2019.

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